at&t

Patrick W. Turner
General Counsel-South Carolina
Legal Department

AT&T South Carolina
1600 Williams Street
Suite 5200
Columbia, SC 29201

T: 803.401-2900
F: 803.254.1731
patrick.turner.1@att.com
www.att.com

February 28, 2008

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: In the Matter of Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Communications L.P., Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina, d/b/a AT&T Southeast
Docket No. 2007-255-C

In the Matter of Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Communications L.P./ Sprint Spectrum L.P. d/b/a Sprint PCS and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina, d/b/a AT&T Southeast
Docket No. 2007-256-C

Dear Mr. Terreni:

Enclosed for filing in the above-referenced matters is the Brief of AT&T South Carolina.

By copy of this letter, I am serving all parties of record with a copy of this Brief as indicated on the attached Certificate of Service.

Sincerely,

Patrick W. Turner

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
705127

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

IN THE MATTER OF PETITION FOR APPROVAL OF NEXTEL SOUTH CORP.'S ADOPTION OF THE INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS L.P., SPRINT SPECTRUM L.P. D/B/A SPRINT PCS AND BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTH CAROLINA D/B/A AT&T SOUTHEAST	)	Docket No. 2007-255-C
IN THE MATTER OF PETITION FOR APPROVAL OF NPCR, INC. D/B/A NEXTEL PARTNERS' ADOPTION OF THE INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS L.P., SPRINT SPECTRUM L.P. D/B/A SPRINT PCS AND BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTH CAROLINA D/B/A AT&T SOUTHEAST	)	Docket No. 2007-256-C

BRIEF OF AT&T SOUTH CAROLINA

In compliance with the Order the Public Service Commission of South Carolina ("the Commission") issued in these consolidated dockets on February 20, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina respectfully submits its Brief addressing the Petitions of Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners for Approval of their Adoption of the BellSouth-Sprint Interconnection Agreement.[1]

[1] As used in this Brief, "Nextel" refers collectively to Nextel South Corp. and NPCR, Inc. d/b/a Nextel Partners, and "Petition" refers collectively to the Petitions filed by Nextel South

SUMMARY OF AT&T SOUTH CAROLINA'S POSITION

In 2001, AT&T South Carolina and Sprint began operating under a unique negotiated interconnection agreement ("the Sprint ICA").[2] AT&T South Carolina, in its capacity as an incumbent local exchange company ("ILEC"), was on one side of the agreement. Both Sprint CLEC (a wireline carrier) *and* Sprint PCS (a wireless carrier) were on the other side of the agreement. If either Sprint CLEC or Sprint PCS had been the only other party to the agreement, AT&T South Carolina would not have voluntarily entered into the Sprint ICA.

Seven years later, Nextel (a wireless carrier) is seeking to adopt the Sprint ICA. Unlike the wireless party to the Sprint ICA, Nextel is not bringing a wireline carrier or any wireline services to the table. Instead, it seeks to adopt the Sprint ICA as a stand-alone wireless carrier, even though the Sprint ICA contains vast expanses of wireline-specific provisions that Nextel, as a stand-alone wireless carrier, cannot legally invoke.

Nextel seeks such an unorthodox adoption – and one that clearly is not permitted by controlling authority – solely because it is in its own financial interests to do so. As a result of unique negotiation, compromise, and extensive evaluation of costs incurred by each party (wireline and wireless) for the termination of traffic, the Sprint Agreement contains "bill and keep" and "50/50 shared facilities" arrangements that do not appear in AT&T interconnection agreements with stand-alone wireless carriers like Nextel. If Nextel is successful in its attempts to adopt the Sprint Agreement, it and its affiliated companies (collectively "Sprint/Nextel")

Corp. in Docket No. 2007-255-C and by NPCR, Inc. d/b/a Nextel Partners in Docket No. 2007-256-C.

[2] In its February 20, 2008 Order, the Commission granted the Joint Motion of AT&T South Carolina and Nextel to accept the Sprint ICA (which can be viewed on AT&T South Carolina's website at http://cpr.bellsouth.com/clec/docs/all_states/index7.htm) into the record as though it had been received during a live hearing in these consolidated dockets.

likely will improperly attempt to use certain AT&T Merger Commitments[3] to "port" the adopted agreement into each of the other twenty-one states in which AT&T is an ILEC.[4] Particularly in the thirteen states in which AT&T was an ILEC prior to its merger with BellSouth, this would allow Sprint/Nextel to get a free ride for every one of the millions of minutes of traffic that the AT&T ILEC in those states terminate for Sprint/Nextel that is in excess of the minutes of traffic that Sprint/Nextel terminates for the AT&T ILECs in those states. Likewise, particularly in those 13 states, Sprint/Nextel makes much more relative use of the interconnection facilities between the parties' switches than reflected for Sprint PCS and Sprint CLEC in the Sprint ICA, so that if AT&T were required to share equally with Sprint/Nextel the price of those facilities in those thirteen states, AT&T would be effectively subsidizing Sprint/Nextel's use of those facilities through an economically irrational pricing arrangement.

In the remainder of this Brief, AT&T South Carolina addresses the issues raised by Nextel's Petition by:

I. Describing the unique Sprint ICA and Nextel's attempts to adopt the Sprint ICA;

II. Explaining AT&T's practical, compelling concerns with Nextel's attempt to adopt the Sprint ICA;

III. Explaining that Section 252(i) of the federal Telecommunications Act of 1996 ("the 1996 Act") does not allow Nextel to adopt the Sprint ICA; and

---

[3] The FCC's Order approving the merger of AT&T Inc. and BellSouth Corporation contains, as Appendix F, a number of commitments the FCC considered in approving the merger. *See* Memorandum Opinion and Order, *In the Matter of AT&T, Inc. and BellSouth Corporation Application for Transfer of Control*, 22 F.C.C.R. 5662 at ¶222, Appendix F (March 26, 2007)("Merger Order"). Exhibit PLF-1 to the Direct Testimony of AT&T witness Scot Ferguson is a copy of Appendix F to the Merger Order.

[4] Although any such porting attempt would be improper because the "bill and keep" arrangement and the facilities pricing arrangement are state-specific pricing arrangements that are not eligible for porting under AT&T's Merger Commitments, the costs to AT&T of defending itself against these improper attempts would be significant.

IV. Explaining that: (a) the Commission should dismiss Nextel's Petition to the extent it is based on AT&T's Merger Commitments (or, at a minimum, decline to decide the issue until the FCC rules on AT&T's pending Petition addressing those Commitments); and (b) in any event, those Commitments do not allow Nextel to adopt the Sprint ICA.

I. BACKGROUND

A. The Sprint ICA

The Sprint ICA contains negotiated terms and conditions between three parties: AT&T South Carolina on the one hand, and Sprint CLEC and Sprint PCS collectively on the other hand.[5] Sprint CLEC is a provider of wireline local exchange telecommunications services, and Sprint PCS is a provider of wireless telecommunications services.[6] When AT&T South Carolina, Sprint CLEC, and Sprint PCS negotiated and entered into the Sprint ICA, neither Sprint CLEC nor Sprint PCS had any affiliation with Nextel, and Nextel had no affiliation with either Sprint CLEC or Sprint PCS.[7]

Section 6.1 of Attachment 3 to the Sprint ICA governs reciprocal compensation for call transport and termination for: CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic. This provision calls for a "bill and keep" reciprocal compensation arrangement." As explained in more detail in Attachment A to this Brief, this means that AT&T South Carolina on the one hand, and Sprint CLEC and Sprint PCS on the other hand, agreed not to charge one another for the transport and termination functions they perform when they exchange local traffic between their respective customers.[8] As the Federal Communications Commission ("FCC") has recognized, a "bill and keep" arrangement is a rational and appropriate pricing mechanism when the traffic exchanged between the carriers is roughly balanced – that is, when the traffic going

---

5 *See* Ferguson Direct at 11; Sprint ICA at 1; Stipulation at pp. 1-2, ¶1.
6 *See* Stipulation at p. 2, ¶¶ 2-3.
7 *See* Stipulation at p. 3, ¶10.
8 *See* 47 C.F.R. §51.713(a).

from AT&T South Carolina to Sprint CLEC and Sprint PCS collectively is roughly equal to the traffic going from Sprint CLEC and Sprint PCS collectively to AT&T South Carolina.[9] Similarly, this Commission consistently has ruled that "bill and keep" is an appropriate pricing mechanism for reciprocal compensation purposes only when the traffic is roughly balanced.[10] When the traffic is imbalanced, however, a "bill and keep" arrangement imposes excessive costs on the carrier that transports and terminates the most traffic (by depriving it of compensation to recover the costs of the transport and termination functions it performs).

AT&T South Carolina did not enter into the "bill and keep" arrangement with Sprint CLEC and Sprint PCS lightly. Instead, the arrangement was the result of negotiation, compromise, and an extensive evaluation of costs incurred by each party for the termination of traffic. Moreover, the "bill and keep" arrangement in the Sprint ICA was specifically contingent

---

[9] *See Id.* at §51.713(b)("A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so . . . .")(emphasis added).

[10] *See* Order on Arbitration, *In Re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with GTE South, Inc.*, Order No. 97-211 in Docket No. 96-375-C at 12-13 (March 17, 1997)(ruling that the parties must pay one another for transport and termination "until such time as this traffic becomes roughly equal. At the time when traffic becomes roughly equal between the Parties, the Commission will consider a "Bill and Keep" methodology for use between the Parties."); Order Ruling on Arbitration, *In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order No. 2005-544 in Docket No. 2005-67-C at 27 (adopting a "bill and keep" arrangement because "[t]he only traffic that would be subject to reciprocal compensation . . . , in the absence of regulatory arbitrage, would be roughly balanced."); Order Ruling on Arbitration, *In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order No. 2006-2 in Docket No. 2005-188-C at 27 (adopting a "bill and keep" arrangement because "[t]he only traffic that would be subject to reciprocal compensation . . . , in the absence of regulatory arbitrage, would be roughly balanced.")

upon the agreement by *all three parties* (AT&T South Carolina, wireline provider Sprint CLEC, and wireless provider Sprint PCS) to adhere to bill and keep. In fact, the Sprint ICA allows AT&T South Carolina, at its option, to renegotiate or terminate the "bill and keep" arrangement with the remaining party if either Sprint CLEC or Sprint PCS opts into another interconnection arrangement with AT&T South Carolina pursuant to 252(i) of the Act which calls for reciprocal compensation. All of this is memorialized in the Sprint ICA:

> Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between [AT&T South Carolina], Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided [AT&T South Carolina] a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with [AT&T South Carolina] pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between [AT&T South Carolina] and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by [AT&T South Carolina].[11]

Consistent with their treatment of their reciprocal compensation obligations to each other, the three parties to the Sprint ICA also agreed to share equally the cost of interconnection facilities between AT&T South Carolina switches and Sprint PCS and Sprint CLEC switches within AT&T South Carolina's service area. Accordingly, the Sprint ICA provides, in pertinent part, as follows for Sprint PCS and for Sprint CLEC, respectively:

> The cost of the interconnection facilities between [AT&T South Carolina] and Sprint PCS switches within [AT&T South Carolina's] service area shall be shared on an equal basis.[12]

> For two-way interconnection trunking that carries the Parties' Local and IntraLATA Toll Traffic only, excluding Transit Traffic, and for the two-

---

11 Sprint ICA, Attachment 3, Section 6.1 (emphasis added).

12 Sprint ICA, Attachment 3, Section 2.3.2.

> way Supergroup interconnection trunk group that carries the Parties' Local and IntraLATA Toll Traffic, plus Sprint CLEC's Transit Traffic, the Parties shall be compensated for the nonrecurring and recurring charges for trunks and facilities at 50% of the applicable contractual or tariff rates for the services provided by each Party.[13]

Earlier this year, the Commission issued an Order approving an amendment to the Sprint ICA that extends its term for three years from March 20, 2007 to March 19, 2010.[14]

B. Nextel's Request to Adopt the Sprint ICA.

Nextel seeks an Order approving its request for adoption of the "existing interconnection agreement between AT&T South Carolina and Sprint dated January 1, 2001 and initially approved by the Commission in Docket No. 2000-23-C."[15] As noted above, there are three parties to the Sprint ICA: AT&T South Carolina on the one hand, and wireline carrier Sprint CLEC and wireless carrier Sprint PCS collectively on the other hand.[16] Like the Sprint PCS party to the original agreement, Nextel "is licensed by the FCC to provide, and . . . does provide, wireless telecommunications services in the State of South Carolina."[17] Unlike the Sprint PCS party to the original agreement, however, Nextel is not bringing a wireline carrier to the table.

---

13 Sprint ICA, Attachment A, Section 2.9.5.1.

14 *See* Order Approving Amendment to Interconnection Agreement, *In Re: Petition of Sprint Communications Company L.P. and Spring Spectrum L.P. DBA Sprint PCS for Arbitration of Rates, Terms and Conditions of Interconnection with BellSouth Telecommunications, Inc. DBA AT&T South Carolina DBA AT&T Southeast,* Order No. 2008-27 in Docket No. 2007-215-C (January 23, 2008). This Order was the result of a Joint Motion filed by AT&T South Carolina and Sprint after AT&T South Carolina submitted its pre-filed testimony in these consolidated dockets. Accordingly, AT&T South Carolina voluntarily withdraws its argument that Nextel did not seek to adopt the Sprint ICA within a reasonable period of time after that approved agreement was available for public inspection. *See, e.g.,* AT&T South Carolina's Motion to Dismiss and, in the Alternative, Answer at pp. 6-8. AT&T South Carolina previously withdrew its arguments that Nextel failed to comply with its existing interconnection agreement with AT&T South Carolina. *See Id.,* pp. 8-9; Ferguson Direct at 18-19).

15 *See* Respective Petitions at p. 8.

16 *See* Ferguson Direct a 11; Sprint ICA at 1; Stipulation at pp. 1-2, ¶1.

17 *See* Stipulation at p. 2, ¶¶4-5.

Nor can Nextel itself claim to be bringing wireline services into the agreement it seeks to adopt, because it "is not certificated to provide and does not provide wireline local exchange telecommunications services in the State of South Carolina."[18] Nextel, therefore, is a stand-alone wireless provider that is seeking to adopt an agreement AT&T South Carolina entered into with a wireless provider and a wireline provider *collectively*.

II. AT&T'S SOUTH CAROLINA'S PRACTICAL CONCERNS WITH NEXTEL'S ATTEMPTS TO ADOPT THE SPRINT ICA

Before explaining why Nextel cannot lawfully adopt the Sprint ICA, AT&T South Carolina will explain the compelling practical reasons for opposing Nextel's attempts to adopt that agreement. As noted above, both the FCC and this Commission have explained that "bill and keep" may be imposed only when the traffic exchanged between the parties is (and is expected to remain) roughly balanced. The following testimony of AT&T South Carolina witness Scot Ferguson demonstrates that this balance rarely exists between AT&T South Carolina and stand-alone wireless providers:

> [b]ill-and-keep arrangements are unusual for wireless traffic. In fact, I am not aware of any AT&T agreements with stand-alone wireless providers like Nextel that contain a bill-and-keep arrangement.[19]

If Nextel is permitted to adopt the Sprint ICA as a stand-alone wireless carrier, other stand-alone wireless carriers presumably could argue that they too should be allowed to adopt the agreement. If such arguments were to prevail, these other stand-alone wireless carriers could avoid providing "a substantial cost study supporting [their] costs" (as the wireless parties to the Sprint ICA did),[20] avoid an examination of the costs associated with a "bill and keep" arrangement (as occurred with regard to the wireless parties to the Sprint ICA), and simply walk into a "bill and keep"

---

18 *See* Stipulation at p. 2, ¶¶4-5.

19 Ferguson Direct at 14.

20 Sprint ICA, Attachment 3, Section 6.1

arrangement for wireless local traffic despite an imbalance of such traffic. As explained in more detail in Attachment B to this Brief, this would make AT&T South Carolina's costs of providing the Sprint ICA to such adopting carriers greater than AT&T South Carolina's costs of providing the Sprint ICA to the original parties to that agreement. The same concerns exist with regard to the 50-50 split of the costs of shared facilities in the Sprint ICA.[21]

Prior to the AT&T-BellSouth merger, the direct impact of these concerns, while significant, would have been limited to South Carolina. Today, however, if Nextel is allowed to adopt the Sprint ICA, Nextel (and possibly other stand-alone wireless carriers) could improperly attempt to use the Merger Commitments upon which Nextel erroneously relies to operate under the adopted agreement in one or more of the other 21 states in which AT&T is an ILEC.[22] The cost of defending such improper attempts is a significant concern in and of itself. The increased costs AT&T would incur for transporting and terminating wireless traffic is an even more significant concern.

Nextel and affiliated companies (collectively Sprint/Nextel) already have attempted to engage in this type of arbitrage. Nextel has filed petitions seeking to adopt the Sprint ICA in each of the nine states in which pre-merger BellSouth was an ILEC.[23] Additionally, as explained

---

[21] *See* Ferguson Direct at 14 ("This particular [50-50] split is unusual for wireless traffic. In fact, I am not aware of any AT&T agreements with stand-alone wireless providers like Nextel that contain this particular split.").

[22] As was the case prior to the AT&T – BellSouth merger, a carrier can "adopt" an in-state interconnection agreement pursuant to 47 U.S.C. §252(i). As a result of the Merger Commitments, a carrier may, under appropriate circumstances, "port" an agreement from one state into another state.

[23] *See Nextel South Corp. Notice of Adoption of Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.,* Docket No. TBD (Al. Pub. Serv. Comm'n filed June 26, 2007); *NPCR, Inc. Notice of Adoption of Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.,* Docket No. TBD (Al. Pub. Serv. Comm'n filed June 26, 2007); *Notice of Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between*

in the Declaratory Petition AT&T filed with the FCC on February 5, 2008, Sprint/Nextel has filed pleadings in each of the other thirteen states in which AT&T is an ILEC seeking to "port"

BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 200l, Docket No. 070368-TP (Fl. Pub. Serv. Comm'n filed June 8, 2007); *Notice of Adoption by Nextel South Corp and Nextel West Corp., (collectively "Nextel") of the Existing "Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 200l,* Docket No. 070369-TP (Fl. Pub. Serv. Comm'n filed June 8, 2007); *Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast,* Docket No. 25430-U (Ga. Pub. Serv. Comm'n filed June 21, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast,* Docket No. 25431-U (Ga. Pub. Serv. Comm'n filed June 21, 2007); *Notice of Adoption by Nextel West Corp. ("Nextel") of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 2001,* Case No. 2007-00255 (Ky. Pub. Serv. Comm'n filed June 21, 2007); *Notice of Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 2001,* Case No. 2007-00256 (Ky. Pub. Serv. Comm'n filed June 21, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Louisiana d/b/a AT&T Southeast* Docket No. U-30185 (La. Pub. Serv. Comm'n filed June 26, 2007); *Petition for Approval of Nextel Partners' Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Louisiana d/b/a AT&T Southeast* Docket No. U-30186 (La. Pub. Serv. Comm'n filed June 26, 2007); *NPCR, Inc. ("Nextel Partners") Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.* Docket No. 2007-UA-316 (Ms. Pub. Serv. Comm'n filed June 28, 2007); *Nextel South Corp. ("Nextel") Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. 2007-UA-317 (Ms. Pub. Serv. Comm'n filed June 28, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T North Carolina d/b/a AT&T Southeast* Docket No. P-55, Sub 1710 (NC Pub. Util. Comm'n filed June 22, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Commun's L.P. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast* Docket No. 2007-255-C (SC Pub. Serv. Comm'n. filed June 28, 2007); *Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Commun's L.P. et al., and BellSouth Telecommun's, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast* Docket No. 2007-256-C (SC Pub. Serv. Comm'n. filed June 28, 2007); *Nextel South Corp.'s Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. 07-00161 (Tn. Reg. Auth. filed June 21, 2007). *NPCR, Inc. d/b/a Nextel Partners' Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.,* Docket No. 07-00162 (Tn. Reg. Auth. filed June 21, 2007).

the AT&T Kentucky – Sprint ICA (including its bill-and-keep and facility pricing arrangement) to those thirteen states.[24] Moreover, Sprint/Nextel sought not only to port BellSouth-specific pricing arrangements outside the BellSouth area, but to couple that port with a critical substantive change to the Kentucky arrangement, by proposing to drastically change the mix of parties – and thus, the balance of traffic to be exchanged – that would be subject to bill-and-keep and the 50/50 facility pricing arrangement. Although the precise legal entities differ between states, the linchpin of Sprint/Nextel's proposal was its attempt to port the BellSouth bill-and-keep arrangement and facility pricing arrangement with Sprint PCS and Sprint CLEC to other Sprint affiliates in non-BellSouth states, and to add Nextel to the mix of parties to the

---

[24] *See Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Arkansas*, Docket No. 07-161-C (Ark. Pub. Serv. Comm'n filed Dec. 20, 2007); *Application of Sprint Commun's Co. et al. for Comm'n Approval of an Interconnection Agreement with Pacific Bell Tel. Co. d/b/a AT&T California pursuant to the "Port-In Process" Voluntarily Created and Accepted by AT&T Inc. as a Condition of Securing Federal Commun's Comm'n Approval of AT&T Inc.'s Merger with BellSouth Corp.*, Application No. 07-12-017 (Cal. Pub. Util. Comm'n filed Dec. 20, 2007); *Application of Sprint Commun's Co. et al. for An Order Compelling The Southern New England Bell Tel. Co. d/b/a AT&T Connecticut to Enter an Interconnection Agreement on Terms Consistent with Federal Commun's Comm'n Orders*, Docket No. 07-12-19 (Conn. Dep't of Pub. Util. Control filed Dec. 14, 2007); *Sprint Commun's Co. v. Illinois Bell Tel. Co. d/b/a AT&T Illinois*, Docket No. 07-0629 (Ill. Comm. Comm'n filed Dec. 28, 2007); *Sprint Commun's Co. v. Indiana Bell Tel. Co. d/b/a AT&T Indiana*, Cause No. 43408 (Ind. Util. Reg. Comm'n filed Dec. 19, 2007); *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Kansas*, Docket No. 08-SWBT-602-COM (Kan. Corp. Comm'n filed Dec. 26, 2007); *Complaint of Sprint Commun's Co. et al. against Michigan Bell Tel. Co. d/b/a AT&T Michigan*, Case No. U-15491 (Mich. Pub. Serv. Comm'n filed Dec. 21, 2007); *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Missouri*, Case No. TC-2008-0182 (Mo. Pub. Serv. Comm'n filed Dec. 10, 2007); *Sprint Commun's Co. v. Nevada Bell Tel. Co. d/b/a AT&T Nevada*, Docket No. 08-01001 (Nev. Pub. Util. Comm'n filed Jan. 2, 2008); *In re Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Commun's Co. v. Ohio Bell Tel. Co. d/b/a AT&T of Ohio, Relative to the Adoption of an Interconnection Agreement*, Case No. 07-1136-TP-CSS (Ohio Pub. Util. Comm'n filed Oct. 26, 2007); *Application of Sprint Commun's Co. et al. for Approval of Interconnection Agreement with AT&T Oklahoma*, Cause No. PUD 200700454 (Okla. Corp. Comm'n filed Dec. 14, 2007); *Sprint's Complaint for Post-Interconnection Dispute Resolution with Sw. Bell Tel. Co., d/b/a AT&T Texas, Regarding Adoption of Interconnection Agreement Pursuant to Merger Conditions*, Docket No. 35112 (Tex. Pub. Util. Comm'n filed Dec. 12, 2007); *Sprint Commun's Co. v. Wisconsin Bell, Inc. d/b/a AT&T Wisconsin*, Docket No. 6720-TI-211 (Wisc. Pub. Serv. Comm'n filed Dec. 19, 2007).

arrangement. The Ohio Complaint, for example, sought to add other affiliates, including Nextel, to the combination of one Sprint CLEC and one Sprint CMRS provider on which the Kentucky agreement was founded.

AT&T is concerned that its ILECs in these 13 states terminate much more traffic for the Sprint/Nextel companies in the aggregate than the Sprint/Nextel companies terminate for the AT&T ILECs in these states. As a result, if Sprint/Nextel were permitted to port the bill-and-keep arrangement in the BellSouth agreement pursuant to Commitment 7.1, AT&T is concerned that Sprint/Nextel would be getting a free ride for every one of the millions of minutes of traffic that the AT&T ILECs terminate for Sprint/Nextel that is in excess of the minutes of traffic that Sprint/Nextel terminate for the AT&T ILECs. Likewise, AT&T is concerned that Sprint/Nextel makes much more relative use of the interconnection facilities between the parties' switches than reflected for Sprint PCS and Sprint CLEC in the Sprint ICA, so that if AT&T were required to share equally with Sprint/Nextel the price of those facilities in the legacy AT&T ILEC states, AT&T would be effectively subsidizing Sprint/Nextel's use of those facilities through an economically irrational pricing arrangement.[25]

III. SECTION 252(i) OF THE 1996 ACT DOES NOT ALLOW NEXTEL TO ADOPT THE SPRINT ICA

Nextel contends that it is entitled to adopt the Sprint ICA by virtue of Section 252(i) of the 1996 Act.[26] This provision states:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to

---

[25] AT&T, of course, believes that the "bill and keep" arrangement and the facilities pricing arrangement in the Sprint ICA are state-specific pricing arrangements that are not eligible for porting under AT&T's Merger Commitments, and as explained below, AT&T has asked the FCC for a declaratory ruling to that effect.

[26] *See, e.g.,* Petition at p. 4, ¶6; Petition at Exhibit B; Felton Direct at 12-13, Exhibit MGF-5 (May 18, 2007 letter).

which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.[27]

For the following reasons, Section 252(i) does not allow Nextel to adopt the Sprint ICA.

A. None of the relief Nextel seeks constitutes an adoption of the Sprint ICA as contemplated by Section 252(i).

When a requesting telecommunications carrier appropriately adopts an interconnection agreement pursuant to Section 252(i), it does not become a co-party to the original agreement. Instead, it becomes a party to a second and distinct agreement. Assume, for instance, that Carrier B appropriately adopts an existing interconnection agreement between Carrier A and AT&T South Carolina. Following the adoption, there is not a single agreement with AT&T South Carolina to which Carrier A and Carrier B are co-parties – if that were the case, a breach of the agreement by Carrier A would allow AT&T South Carolina to seek redress against both Carrier A and Carrier B, and that simply is not the way adoption works. Instead, after the adoption in the example above, there is an original agreement between AT&T South Carolina and Carrier A, and there is a separate and distinct agreement between AT&T South Carolina and Carrier B that contains the same terms and conditions as the agreement between AT&T South Carolina and Carrier A.[28]

Nextel has suggested at least two forms of relief in these consolidated proceedings, neither of which constitutes an adoption of the Sprint ICA as contemplated by Section 252(i). First, Nextel suggests that what it really wants to do is "simply add Nextel as a wireless party to

---

[27] 47 U.S.C. §252(i).

[28] *See* Ferguson Direct at 15 ("Typically, AT&T South Carolina creates "adoption papers" that have the practical effect of substituting the adopting carrier's name for the original carrier's name throughout the agreement including any amendments, thereby binding the adopting carrier to all the rates, terms and conditions contained in the original agreement. The parties then execute the adoption papers.").

the Sprint-AT&T ICA."[29] That, however, is not an adoption of the Sprint ICA. Instead, that is an *amendment* of the Sprint ICA to inject an additional party into the existing agreement, and nothing in Section 252(i) supports, much less requires, such an amendment.

Second, Nextel suggests creating "adoption papers that have the practical effect of substituting the Nextel entity names throughout the ICA whenever the Sprint PCS name occurs."[30] That, of course, would mean that the Sprint CLEC name would remain throughout the adopted agreement, which apparently is what Nextel intends because it states that "Sprint CLEC also stands ready, willing and able to also execute [the Sprint ICA as adopted by Nextel] as an accommodation party."[31] If that were done, Sprint CLEC would be a party to three interconnection agreements with AT&T South Carolina in the same state at the same time. That, however, is not appropriate (even if all three agreements contain the same language) because Sprint CLEC has a finite amount of local traffic, all of which is to be exchanged with AT&T South Carolina under a single interconnection agreement. AT&T South Carolina is unaware of any Section 252(i) jurisprudence that either recognizes the concept of an "accommodation party" as proposed by Nextel or that suggests that a single ILEC can be required to execute multiple interconnection agreements with a single CLEC within a single state. Nothing in Section 252(i) supports, much less requires, this relief that Nextel seeks.

B. Nextel is not seeking to adopt the Sprint ICA upon the same terms and conditions as those provided in the agreement.

Section 252(i) provides that a carrier adopting an existing interconnection agreement must do so "upon the same terms and conditions as those provided in the agreement." Under the

---

29 *See* Felton Rebuttal at 9.

30 *Id.* at 9-10.

31 Petition at Exhibit B, p. 2 of Nextel's proposed amendment to Sprint ICA; Petition at p. 6; ¶11; Felton Direct at 8; Felton Rebuttal at 10.

FCC's current "all-or-nothing" rule implementing this provision, "a requesting carrier may only adopt an effective interconnection agreement in its entirety, taking all rates, terms and conditions of the adopted agreement."[32] In these consolidated dockets, Nextel is seeking to adopt an interconnection agreement that would allow it to: purchase transport and termination services from AT&T South Carolina on a "bill and keep" basis; and purchase interconnection facilities from AT&T South Carolina on the basis of a 50/50 split. As explained below, the evidence of record conclusively shows that Sprint PCS was able to purchase these services at these prices solely because it brought a wireline carrier (Sprint CLEC) to the table as a co-party to the negotiated agreement.

The Sprint ICA contains negotiated terms and conditions between three parties: AT&T South Carolina on the one hand, and Sprint CLEC and Sprint PCS collectively on the other hand.[33] Sprint CLEC is a provider of wireline local exchange services, and Sprint PCS is a provider of wireless telecommunications services.[34] Thus, as AT&T South Carolina witness Scot Ferguson testified, the Sprint ICA "addresses a unique mix of wireline and wireless items (such as traffic volume, traffic types, and facility types), and it reflects the outcome of gives and takes that would not have been made if the agreement addressed only wireline services or only wireless services."[35] Mr. Ferguson went on to provide specific examples of terms and conditions that appear in the Sprint ICA to which AT&T would not have agreed if only a stand-alone wireless company like Nextel had been involved:

---

[32] Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd. 13494 at ¶10 (Rel. July 13, 2004) (emphasis added).

[33] *See* Ferguson Direct at 11; Sprint ICA at 1; Stipulation at pp. 1-2, ¶1.

[34] *See* Stipulation at p. 2, ¶¶ 2-3.

[35] Ferguson Direct at 11 (emphasis added).

> Section 6.1.1 establishes a "bill-and-keep" arrangement for usage on CLEC local traffic, ISP-bound traffic, and wireless local traffic. Bill-and-keep arrangements are unusual for wireless traffic. In fact, I am not aware of any AT&T agreements with stand-alone wireless providers like Nextel that contain a bill-and-keep arrangement.[36]

> Section 2.3.2 establishes a 50/50 split for the cost of interconnection facilities for wireless traffic, or as the agreement states, "[t]he cost of the interconnection facilities...shall be shared on an equal basis." This particular split is unusual for wireless traffic. In fact, I am not aware of any AT&T agreements with stand-alone wireless providers like Nextel that contain this particular split.[37]

If Nextel wishes to rely on Section 252(i) to receive the benefits of the wireless provisions of this agreement "upon the same terms and conditions as those provided in the agreement," it must bring wireline interests to the table comparable to those brought by the original wireless party to the agreement (Sprint PCS).

Nextel indisputably is not doing so. Nextel is not providing wireline services in South Carolina.[38] Beyond that, Nextel cannot lawfully provide wireline services in South Carolina because it is not certificated to provide such services in this State.[39] Nextel, therefore, is seeking to adopt the Sprint ICA as a stand-alone wireless provider, which is not an adoption "upon the same terms and conditions as those provided in the agreement."

Nextel seeks to gloss over this dispositive shortcoming by claiming that as a result of the Sprint-Nextel merger, "Nextel enjoys the same corporate relationship with Sprint CLEC as does Sprint PCS – they are all affiliate sister companies under the same overarching Sprint Nextel corporate umbrella."[40] This "sisters-by-merger" argument adds no merit whatsoever to Nextel's position. If XYZ Stand-Alone Wireless Company attempted to adopt the Sprint ICA, it clearly

---

36 Ferguson Direct at 14.
37 Ferguson Direct at 14.
38 Ferguson Direct at 12; Stipulation at p. 2, ¶¶4, 5.
39 Ferguson Direct at 13; Stipulation at p. 2, ¶¶4-5.
40 Felton Rebuttal at 8.

could not satisfy the "same terms and conditions" requirement by glomming onto the wireline traffic Sprint CLEC already is exchanging with AT&T South Carolina pursuant to the existing Sprint ICA. The same is true of Nextel because both before and after the Sprint-Nextel merger, Nextel, Sprint CLEC, and Sprint PCS were and still are separate and distinct legal entities.[41] Nextel, therefore, cannot use the traffic its "sister corporation" Sprint CLEC already is exchanging with AT&T South Carolina to satisfy the "same terms and conditions" requirement, just as an applicant for admission to a university cannot use her sister's academic record to qualify for admission.

C. Nextel's desired adoption would violate the FCC's "all-or-nothing" adoption rule.

As explained by AT&T South Carolina witness Scot Ferguson, adoptions typically are implemented by way of "adoption papers" that have the practical effect of "substituting the adopting carrier's name for the original carrier's name throughout the agreement including any amendments, thereby binding the adopting carrier to all the rates, terms and conditions contained in the original agreement."[42] Applying this industry-standard adoption process to these consolidated dockets further highlights the infirmities of Nextel's attempts to adopt the Sprint ICA.

If Nextel's name were substituted for both Sprint CLEC and Sprint PCS, portions of the adopted agreement could appear to erroneously suggest that Nextel could avail itself of provisions that apply only to CLECs. To cite but one example, Attachment 2 of the Sprint ICA allows Sprint CLEC to purchase unbundled network elements ("UNEs") from AT&T South Carolina. Substituting Nextel for Sprint CLEC would result in language that could appear to

---

41 Stipulation at p.3, ¶7, p. 4, ¶12.

42 Ferguson Direct at 15.

erroneously suggest that Nextel can purchase UNEs from AT&T South Carolina.[43] Nextel, however, only provides mobile wireless services in South Carolina,[44] and in its Triennial Review Remand Order, the FCC ruled that:

> Consistent with [the D.C. Circuit Court of Appeal's opinion in] USTA II, we deny access to UNEs in cases where the requesting carrier seeks to provide service exclusively in a market that is sufficiently competitive without the use of unbundling. In particular, we deny access to UNEs for the exclusive provision of mobile wireless services . . . .[45]

Nextel, therefore, cannot purchase UNEs from AT&T South Carolina, and it would be improper for the adopted agreement to suggest otherwise.[46]

Nextel might suggest that this problem could be solved by substituting Nextel for Sprint PCS while leaving all references to Sprint CLEC unchanged in the adopted agreement. This purported "solution," of course, merely highlights the fact that Nextel is attempting to use the traffic its "sister corporation" Sprint CLEC already is exchanging with AT&T South Carolina to satisfy the "same terms and conditions" requirement of Section 251(i) which, as explained above, it cannot do. Additionally, this purported solution would effectively require a single ILEC to execute multiple interconnection agreements with a single CLEC within a single state which, again, cannot be required.

Finally, Nextel might suggest that this problem could be solved by allowing Nextel to adopt only "the same wireless-applicable provisions of the Sprint-AT&T ICA that are utilized by

---

43 Ferguson Direct at 16.

44 Stipulation at pp. 2-3, ¶¶4-5.

45 *See* Order On Remand, *In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 F.C.C.R. 2533 at ¶34 (February 4, 2005)(emphasis added).

46 Attachment B to this Brief is a summary of other provisions of the Sprint ICA that Nextel, as a stand-alone wireless provider, cannot legally avail itself.

Sprint PCS . . . ."[47] The problem with this approach, of course, is that the FCC has ruled that a carrier is no longer permitted to "pick and choose" the provisions in an approved agreement that it wants to adopt. Instead, the FCC has adopted

> an "all-or-nothing rule" that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement.[48]

Allowing Nextel to "adopt" the Sprint interconnection agreement after revising the agreement to clarify which provisions Nextel can and cannot use clearly is contrary to this FCC ruling.

IV. THE MERGER COMMITMENTS ARE NOT APPROPRIATELY BEFORE THE COMMISSION AND, EVEN IF THEY WERE, THEY DO NOT ALLOW NEXTEL TO ADOPT THE SPRINT ICA

In letters to AT&T South Carolina dated May 18, 2007,[49] in its Petition,[50] and in its testimony,[51] Nextel claims to rely on the first two AT&T Merger Commitments under the heading "Reducing Transaction Costs Associated with Interconnection Agreements" as the basis for its request to adopt the Sprint ICA.[52] These commitments provide that:

> [7.]1. The AT&T/BellSouth 1LEC shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

---

47 Felton Rebuttal at 9.

48 *See* Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C.R. 13494 at ¶1 (July 13, 2004)(emphasis added).

49 *See* Exhibits MGF-5 and MGF-6 of Felton Direct.

50 *See* Petition at pp. 3-4, ¶5.

51 *See* Felton Direct at 6-8.

52 *See* Exhibits MGF-5 and MGF-6 of Felton Direct; Respective Petitions at ¶10.

[7.]2. The AT&T/BellSouth ILECs shall not refuse a request by a telecommunications carrier to opt into an agreement on the ground that the agreement has not been amended to reflect changes of law, provided the requesting telecommunications carrier agrees to negotiate in good faith an amendment regarding such change of law immediately after it has opted into the agreement.

As explained below, Nextel's reliance on these Merger Commitments in these consolidated dockets is misplaced for several reasons.

First, the Commission should dismiss Nextel's request to the extent that it is based on these Merger Commitments because the FCC has exclusive jurisdiction over those Commitments. Alternatively, the Commission should hold these proceedings in abeyance until the FCC rules on AT&T's Petition for a Declaratory Ruling regarding the application of these Merger Commitments. Finally, in any event, it is clear that neither of the Commitments upon which Nextel relies supports the relief Nextel seeks.

A. The FCC has exclusive jurisdiction over AT&T's Merger Commitments.

The question of whether these federal Merger Commitments (that were presented to and approved by the FCC) support Nextel's claims is a question that is within the exclusive jurisdiction of the FCC. The Commission, therefore, should dismiss the Petition to the extent that it is based on the Merger Commitments, because Nextel cannot properly bring its claims before the Commission.

It is well settled that the Commission must possess jurisdiction over the parties, as well as the subject matter, in a proceeding[53] and that the Commission "possesses only the authority given it by the legislature."[54] Accordingly, the Commission should dismiss a request for relief if

---

[53] *See, e.g., Mobley v. Bland*, 200 S.C. 448, 21 S.E. 2d 22 (1942) (to possess proper jurisdiction over the entirety of a case, the court must have both personal and subject matter jurisdiction).

[54] *South Carolina Cable Television Assoc. v. South Carolina Public Service Commission*, 313 S.C. 48, 437 S.E. 2d 38, 38 (1993); *See also*, City of Camden v. Public Service Commission

it asks the Commission to address matters over which it has no jurisdiction or if it seeks relief that the Commission is not authorized to grant. That is exactly what Nextel's Petition does because, as explained below, neither state nor federal law grants the Commission jurisdiction over the Merger Commitments upon which Nextel relies.

The United States Supreme Court has held that the interpretation of a federal agency order, when issued pursuant to the federal agency's established regulatory authority, falls within the federal agency's jurisdiction.[55] This pronouncement clearly applies to the FCC's *Merger Order*. Accordingly, if Nextel desires interpretation or enforcement of any of the Merger Commitments, it must seek such interpretation or enforcement from the FCC.

The FCC made this clear when it explicitly reserved its own jurisdiction over the merger commitments that it approved in its *Merger Order*. Specifically, the FCC stated that "[f]or the avoidance of doubt, unless otherwise expressly stated to the contrary, *all conditions and commitments* proposed in this letter *are enforceable by the FCC* and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter."[56] Nowhere in the *Merger Order* does the FCC provide that the interpretation of merger commitments is to occur outside the FCC.

This is consistent with the fact that while the federal Act grants state Commissions authority to interpret and resolve *specific* issues of federal law (for instance, the requirements of Section 251 in the context of an arbitration proceeding initiated pursuant to Section 252), the Act

---

of South Carolina, 283 S.C. 380, 323 S.E. 2d 519, 521 (1984) ("[t]he Public Service Commission is a governmental body of limited power and jurisdiction, and has only such powers as are conferred upon it either expressly or by reasonably necessary implication by the General Assembly.").

55 *Serv. Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 177 (1959).

56 *Merger Order* (Appendix F), p. 147 (emphases added).

does not grant state Commissions any *general* authority to resolve and enforce purported violations of federal law or FCC orders.[57] This is apparent from the reasoning of the Florida Commission in dismissing a claim that was based on an alleged violation of Section 222 of the federal Act.[58] In dismissing that claim, the Florida Commission noted that it can construe and apply federal law "in order to make sure [its] decision under state law does not conflict" with federal law.[59] The Florida Commission, however, plainly and correctly noted that "[f]ederal courts have ruled that a state agency is not authorized to take administrative action based solely on federal statutes" and that "[s]tate agencies, as well as federal agencies, are only empowered by the statutes pursuant to which they are created."[60] Accordingly, in the *Sunrise Order*, the Florida Commission determined that while it can interpret and apply federal law to ensure that its decision under state law does not conflict with federal law, it cannot provide a remedy (federal or state) for a violation of federal law,[61] which is what the Petitioners are improperly seeking in this proceeding.

In these consolidated dockets, Nextel's claims regarding the merger commitments are not based on state law. Instead, Nextel is asking a state agency to enforce Nextel's erroneous interpretation of federal merger commitments that are embodied in a federal agency's order.

---

57 *See* 47 U.S.C. § 251.

58 *See In re: Complaint by Supra Telecommunications and Information Systems, Inc., against BellSouth Telecommunications, Inc. regarding BellSouth's alleged use of carrier-to-carrier information*, Dkt. No. 030349-TP, Order No. PSC-03-1392-FOF-TP (Dec. 11, 2003) ("*Sunrise Order*").

59 *Id.* at 3-4.

60 *See Sunrise Order* at 3 (citations omitted).

61 *Id.* at 5. The Florida Commission echoed these same principles in *In re: Complaint against BellSouth Telecommunications, Inc.* for alleged overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC, Dkt. No. 031125-TP, Order No. PSC-04-0423-FOF-TP (Apr. 26, 2004), wherein it dismissed a request by a CLEC to find that BellSouth violated federal law. Based on the Sunrise Order, the Florida Commission dismissed the federal law count of the complaint, holding "[s]ince Count Five relies solely on a federal statute as the basis for relief, we find it appropriate to dismiss Count Five." *Id.*

Consequently, the FCC alone possesses the jurisdiction to interpret and enforce the subject merger commitments. [62] For these reasons, the Commission should dismiss Nextel's request to the extent it is based on the merger commitments.

B. Even if the Commission had concurrent jurisdiction over these Merger Commitments, it would be prudent to decline to address them until after the FCC rules on AT&T's pending Petition for a Declaratory Ruling regarding these Commitments.

On February 5, 2008, AT&T Inc. filed a Petition for Declaratory Ruling with the FCC that asks the FCC to resolve several issues that are directly or indirectly related to positions Nextel has taken in these consolidated dockets.[63] Nextel, for instance, purports to rely on Merger Commitment 7.1 even though it is seeking to adopt a South Carolina agreement that has been approved by this Commission. AT&T has asked the FCC to rule that "Commitment 7.1 does not apply to in-state adoptions of interconnection agreements or in any way supersede [FCC] rules governing such adoptions."[64] Nextel asserts that the restrictions that exist with respect to a traditional adoption under Section 252(i) somehow do not apply to its purported adoption under Commitment 7.1.[65] AT&T has asked the FCC to rule that "Commitment 7.1 does not give a carrier the right to port an agreement from one state to another if that carrier would be barred by [FCC] rules implementing Section 252(i) of the Telecommunications Act of 1996 from adopting

---

62 While a state Commission may have certain enforcement authority regarding interconnection agreements that it approves pursuant to the federal Act, that is not the case in this proceeding. The merger commitments Nextel Partners presents were not (and could not be) negotiated or arbitrated pursuant to Section 251 or 252 of the federal Act, and they are not found in an interconnection agreement that has been approved by the Commission. Instead, the merger commitments on which Nextel Partners relies are a wholly independent voluntary commitments that are separate and apart from any Section 251 or 252 matter and are therefore not subject to state interpretation or enforcement.

63 Attachment C to this Brief is a copy of this Petition.

64 Attachment C at p. 2.

65 *See* Felton Direct at 9.

that agreement within the same state."[66] Nextel claims that it "is now entitled to 'port into South Carolina' and adopt the same Sprint-AT&T ICA which, effective with AT&T's execution on October 30, 2007, was extended for 3 years from December 29, 2006 pursuant to the parties' Kentucky amendment."[67] AT&T has asked the FCC to rule that "bill-and-keep arrangements for the transport and termination of telecommunications and facility pricing arrangements are 'state-specific pricing' terms that are not subject to porting under Commitment 7.1 to other states."[68]

The FCC has taken swift action on AT&T's Petition. On February 14, 2008 (a mere nine days after AT&T filed its Petition), the FCC issued a Public Notice that established a February 25, 2008 deadline for interested parties to file comments on AT&T's Petition.[69] Reply comments are due March 3, 2008.

Accordingly, even if the Commission believes it has concurrent jurisdiction regarding the Merger Commitments, AT&T South Carolina respectfully submits that the Commission should not attempt to exercise any such jurisdiction until the FCC has ruled on AT&T's pending Petition. At a minimum, the FCC's ruling on the Petition will provide useful guidance to the parties and the Commission in determining what role, if any, the Merger Commitments play in these consolidated dockets.

---

66 Attachment C at p. 2.

67 Felton Rebuttal at 7. While AT&T South Carolina denies that Nextel is entitled to port the Kentucky Agreement into South Carolina, that issue simply is not before the Commission. Nextel's Petition does not seek to port any agreement from any other state into South Carolina. Instead, in Nextel's own words, it seeks an Order approving its request for adoption of the "existing interconnection agreement between AT&T South Carolina and Sprint dated January 1, 2001 and initially approved by the Commission in Docket No. 2000-23-C." *See* Petition at p. 8.

68 Declaratory Petition at p. 2.

69 *See* Public Notice, *AT&T ILECs Petition for Declaratory Ruling*, FCC Docket No. 08-23 (Released February 14, 2008).

C. In any event, the Merger Commitments do not allow Nextel to adopt the Sprint ICA.

Nextel "is seeking to adopt the very interconnection agreement that has already been approved by this Commission,"[70] and it contends that Merger Commitment 7.1 applies to this in-state adoption request. When AT&T made this Commitment, however, carriers operating in South Carolina already had the right to adopt agreements that had been approved in South Carolina consistent with the provisions of 47 U.S.C. § 252(i) and the FCC's rules implementing those provisions. Clearly, Commitment 7.1 does not in any way address the in-state adoption rights carriers already had.

Instead, Commitment 7.1 gives carriers certain rights they did not have before AT&T made the Commitment. Prior to this Commitment, a carrier did not have the right to port an interconnection agreement from another state into South Carolina, and Commitment 7.1 now provides carriers certain state-to-state porting rights that they previously did not have. This Commitment, therefore, applies only when a carrier wants to take an interconnection agreement from one state and operate under that agreement in a different state (which often is referred to as "porting" an agreement from one state into another state). That is why the commitment contains language such as "subject to state-specific pricing and performance plans and technical feasibility," and "consistent with the laws and regulatory requirements of the state for which the request is made." This language is necessary only when an agreement that was approved in one state is ported into another state. Moreover, no party to the FCC's merger proceedings suggested that this Commitment related in any manner whatsoever to in-state adoptions of interconnection agreements by telecommunications carriers.

---

[70] Felton Direct at 7.

While Commitment 7.2 does apply to in-state adoption requests, it simply has no bearing on Nextel's request. Commitment 7.2 simply states that under specified conditions, AT&T South Carolina "shall not refuse a request . . . to opt into an [interconnection] agreement on the ground that the agreement has not been amended to reflect changes of law." AT&T does not dispute that the Sprint ICA has been amended to reflect changes of law, and AT&T's denial of Nextel's opt-in request is not based on any "change of law" issues.

Nextel, however, contends that these Commitments apply to its in-state adoption request. Beyond that, Nextel contends that these Commitments permit an in-state adoption even when the very same in-state adoption would not be permitted by Section 252(i) of the Act.[71] As noted above, AT&T has asked the FCC for a declaratory ruling addressing both of these contentions, and AT&T respectfully submits that this Commission should not address these contentions until the FCC rules on AT&T's Petition.

Without waiving the foregoing, a brief exploration of Nextel's contentions demonstrates their folly. While AT&T South Carolina has a general obligation under Section 252(i) of the Telecommunications Act of 1996 to make available to any requesting carrier any interconnection agreement to which it is a party,[72] the FCC has ruled that the obligation

---

[71] *See* Nextel's Response to AT&T South Carolina's Motion to Dismiss at 21 ("the 'reasonable period of time' limitation that AT&T contends exists as to a non-merger 252(i) adoption by virtue of 47 C.F.R. §51.809(c) is simply inapplicable to an adoption under Merger Commitment No. [7.]1."); Felton Direct at 9 ("AT&T is attempting to impose restrictions that AT&T believes exist[] with respect to a traditional §252(i) adoption upon a carrier's rights to adopt an ICA pursuant to the merger commitments – for which there simply is no basis to make such claims.").

[72] Section 252(i) of the 1996 Act provides, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). Although Section 252(i) speaks in terms of making available "any interconnection, service, or network element," the FCC has ruled that a requesting carrier that seeks to make an adoption

> shall not apply where the incumbent LEC proves to the state commission that . . . [t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.[73]

The rationale of this ruling is obvious: a general provision that allows requesting carriers to adopt an existing agreement, rather than negotiating and arbitrating an agreement of their own, cannot properly be applied to contract provisions that, if adopted, would impose costs on the ILEC in excess of the costs the ILEC incurs to perform the original agreement.

Merger Commitment 7.1 does not nullify this limitation on interconnection agreement adoptions. Indeed, to read the Commitment otherwise would result in the absurd situation in which a carrier in, for example, Ohio could port an interconnection agreement approved in, for example, Florida, even though a carrier in Florida could not adopt the agreement under Section 252(i). Alternatively, this reading could effectively eviscerate Rule 809(b) altogether – even for in-state adoptions – by permitting carriers to end-run around that rule through a two-step process.

To use the previous example, for instance, a carrier in Ohio with an affiliate in Florida could port a Florida agreement not available for adoption in Florida under FCC rules from Florida to its affiliate in Ohio and then back to Florida. This would accomplish through two steps what the FCC's rules prohibit that carrier from accomplishing in one step. Merger Commitment 7.1 cannot be read to allow such absurd results.

---

under Section 252(i) may not adopt part of an interconnection agreement, but instead must make an adoption on an "all or nothing" basis. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (rel. July 13, 2004).

[73] 47 C.F.R. § 51.809(b).

CONCLUSION

For all of the reasons set forth above, AT&T South Carolina respectfully requests that the Commission enter an order denying Nextel's Petition in its entirety.[74]

AT&T SOUTH CAROLINA

Patrick Turner

PATRICK W. TURNER
Suite 5200
1600 Williams Street
Columbia, South Carolina 29201
(803) 401-2900

JOHN T. TYLER
Suite 4300
675 West Peachtree Street
Atlanta, Georgia
(404) 335-0757

704683

[74] As explained throughout this Brief, Nextel is not entitled to adopt the Sprint ICA. If, however, the Commission disagrees and decides to allow the requested adoption, AT&T South Carolina respectfully requests that the Commission specify in its Order that: (1) AT&T South Carolina is entitled to terminate the bill and keep arrangement in the adopted agreement; (2) if AT&T South Carolina terminates the bill and keep arrangement in the adopted agreement, Nextel and AT&T South Carolina must negotiate new reciprocal compensation arrangements; and (3) any new reciprocal compensation arrangements, whether resulting from mutual agreement of the parties or from a ruling by the Commission or the FCC, shall apply retroactively to the effective date of the adoption. These provisions are consistent with the language of the Sprint ICA, which allows AT&T to terminate or renegotiate these provisions if the Sprint CLEC opts into another agreement and leaves Sprint PCS as the sole remaining party to the original agreement. *See* Sprint ICA, Attachment 3, Section 6.1 ("Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with [AT&T South Carolina] pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between [AT&T South Carolina] and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by [AT&T South Carolina].")(emphasis added).

ATTACHMENT A

ATTACHMENT A

RECIPROCAL COMPENSATION AND SHARED FACILITIES BETWEEN AT&T SOUTH CAROLINA AND STAND-ALONE WIRELESS PROVIDERS LIKE NEXTEL

AT&T South Carolina's concerns in this proceeding arise primarily from the fact that the Sprint ICA that Nextel wishes to adopt provides a "bill and keep" arrangement for reciprocal compensation and a 50-50 shared facilities factor. These provisions are fair and equitable when the traffic between the parties to the agreement is roughly balanced, but when a wireless provider sends more traffic to AT&T South Carolina than AT&T South Carolina sends to the wireless provider (as is typically the case), the "bill and keep" provisions impose excessive costs on AT&T South Carolina (by denying it appropriate compensation for the transport and termination functions it provides to the wireless carrier), and the 50-50 facilities factor causes AT&T South Carolina to bear more of the expense of these facilities than it should.

Exhibit 1 to this Attachment is a simple network diagram that depicts, for illustrative purposes, how AT&T South Carolina and a wireless carrier exchange traffic with one another. Assume, for example, that a wireless customer (depicted by the cell phone and tower on the left side of the diagram) calls an AT&T South Carolina wireline customer (depicted by the handset on the right side of the diagram). That call would travel over the facility that connects the cell tower to the mobile telephone switching office ("MTSO"), where it would then travel over the facility that connects the MTSO to AT&T South Carolina's tandem switch. The call would then travel over the facility that connects the AT&T South Carolina tandem switch to the AT&T South Carolina end office, which would then direct the call over the loop facility that connects the end office

to the AT&T South Carolina customer. A call from the AT&T South Carolina landline customer to the Nextel wireless customer would travel over the same facilities, only in the opposite direction.

RECIPROCAL COMPENSATION

Federal law imposes a duty on "[e]ach telecommunications carrier" to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" so that the customers of the respective carriers can call one another.[1] Local exchange carriers have the further duty "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[2] When one carrier's customer places (or "originates") a call to the other carrier's customer, the originating carrier is required to deliver the call (and to bear the costs of doing so) to its point of interconnection ("POI").[3] At that point, the other carrier is required to "transport" and "terminate" the call to its customer that is being called. This consists of performing any necessary tandem switching, transporting the call to the end office that serves the customer that is being called, performing any necessary end office switching, and delivering the call to the customer's premises.[4] The carrier that performs these transport and termination functions is allowed to charge the originating carrier for the transport and termination functions it performed.[5] As each carrier is allowed to be

---

1 *See* 47 U.S.C. §251(a).
2 *Id.*, §251(b)(5).
3 *See* 47 C.F.R. §51.703(b).
4 *See Id.*, §§701-703.
5 *See, e.g., Id.* §§702(e), 703.

compensated for the transport and termination functions it performs on calls originated by the other carrier, the payment for these functions is called "reciprocal compensation."[6]

The federal act provides that to be considered "just and reasonable," terms and conditions for reciprocal compensation must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier . . . ."[7] The act clarifies that this language does not preclude arrangements that appropriately "afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements) . . . ."[8] The FCC's rules implementing these provisions state that "[a] state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so . . . ."[9] In accordance with this FCC Rule, this Commission consistently has ruled that "bill and keep" is an appropriate pricing mechanism for reciprocal compensation purposes only when the traffic is roughly balanced.[10]

---

6 *See Id,* §702(e).

7 *Id.*, §252(d)(2)(A)(i)(emphasis added).

8 *Id.*, §252(d)(2)(B)(i)(emphasis added).

9 *See* 47 C.F.R. §51.713(b)(emphasis added).

10 *See* Order on Arbitration, *In Re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with GTE South, Inc.*, Order No. 97-211 in Docket No. 96-375-C at 12-13 (March 17, 1997)(ruling that the parties must pay one another for transport and termination "until such time as this traffic becomes roughly equal. At the time when traffic becomes roughly equal between the Parties, the Commission will consider a "Bill and Keep" methodology for use between the Parties."); Order Ruling on Arbitration, *In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co.,*

Applying these principles to Exhibit 1 to this Attachment, the wireless carrier has established its POI at the AT&T South Carolina tandem. Thus, when the wireless customer on the left side of the diagram calls AT&T South Carolina's wireline customer on the right side of the diagram, the wireless carrier is responsible for delivering the call from the cell tower, through the MTSO, and to its POI at the AT&T South Carolina tandem. At that point, AT&T South Carolina takes the call, performs any necessary tandem switching, transports the call from the tandem to its end office, switches the call at the end office, and terminates the call to its wireline customer. AT&T South Carolina is allowed to charge the wireless carrier for those functions that AT&T South Carolina performed.

In Exhibit 1 to this Attachment, AT&T South Carolina has established its POI at the MTSO.[11] Thus, when the AT&T South Carolina wireline customer on the right side of the diagram calls the wireless customer on the left side of the diagram, AT&T South Carolina is responsible for delivering the call from the customer's premises, through the end office switch, through the tandem, and to the MTSO. At that point, the wireless carrier takes the call and performs the transport and termination functions necessary to

---

Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996, Order No. 2005-544 in Docket No. 2005-67-C at 27 (adopting a "bill and keep" arrangement because "[t]he only traffic that would be subject to reciprocal compensation . . . , in the absence of regulatory arbitrage, would be roughly balanced."); Order Ruling on Arbitration, *In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Order No. 2006-2 in Docket No. 2005-188-C at 27 (adopting a "bill and keep" arrangement because "[t]he only traffic that would be subject to reciprocal compensation . . . , in the absence of regulatory arbitrage, would be roughly balanced.")

[11] As noted above, each party to an interconnection agreement is allowed to choose its own POI, which can (and often is) different than the POI chosen by the other party to the agreement.

deliver the call to its wireless customer. The wireless carrier is allowed to charge AT&T South Carolina for those functions that the wireless carrier performed.[12]

As noted above, the Sprint ICA that Nextel seeks to adopt provides a "bill and keep" arrangement for reciprocal compensation. This simply means that the carriers will not charge one another for the transport and termination functions they perform.[13] Instead, the carriers will send their respective end users a bill for the services they provide to them, and the carriers will keep the revenue they receive as a result of their respective billing (rather than sending one another some of that revenue in the form of payments for the transport and termination of traffic, thus the term "bill and keep"). As the FCC has recognized, a "bill and keep" arrangement is a rational and appropriate pricing mechanism when the traffic exchanged between the carriers is roughly balanced – that is, when the number of calls going from the first carrier to the second carrier is roughly equal to the number of calls going from the second carrier to the first.[14] In that instance, the amount the wireless carrier would charge the wireline carrier would be roughly equal to the amount the wireline carrier would charge the wireless carrier. There is no reason to incur the administrative expenses associated with billing one another in this instance, because the billing would typically net out to zero.

---

[12] Unless the wireless carrier submits to the Commission cost data demonstrating that is should be allowed to charge higher rates, the rates the wireless carrier charges for the transport and termination functions it performs must mirror the rates that AT&T South Carolina charges for the transport and termination functions it performs. *See* 47 C.F.R. §51.711.

[13] *See Id.,* §713(a).

[14] *See* Id., §713(b)("A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so . . . .")(emphasis added).

When the traffic is not balanced, however, bill and keep is not a rational and appropriate pricing mechanism. If, for example, 80% of the traffic is going from the wireless carrier to the wireline carrier, the wireless carrier would always owe the wireline carrier more than the wireline carrier would owe the wireless carrier. A bill and keep arrangement in this unbalanced traffic situation, therefore, imposes excess costs on the wireline carrier (by depriving it of compensation to recover the costs of the transport and termination functions it performs.[15]

SHARED FACILITIES FACTOR

In Exhibit 1 to this Attachment, the facility that is subject to the shared facilities factor is the facility that connects the MTSO to the AT&T South Carolina Tandem. Both parties use the facility to deliver their originating traffic to their respective POI. Typically, AT&T South Carolina installs the facility, and the parties use the "shared facilities factor" to determine the proportion that each party will pay for these facilities.

To illustrate, when the wireless customer on the left side of the diagram calls the AT&T South Carolina wireline customer on the right side of the diagram, the wireless carrier must deliver that call to its POI at the AT&T South Carolina tandem. Conversely, when the AT&T South Carolina wireline customer on the right side of the diagram calls the wireless customer on the left side of the diagram, AT&T South Carolina must deliver that call to its POI at the MTSO. Both parties, therefore, use the facility between the MTSO and the AT&T South Carolina tandem to deliver their originating traffic to their POI. Both parties, therefore, should bear an equitable proportion of the cost of that facility.

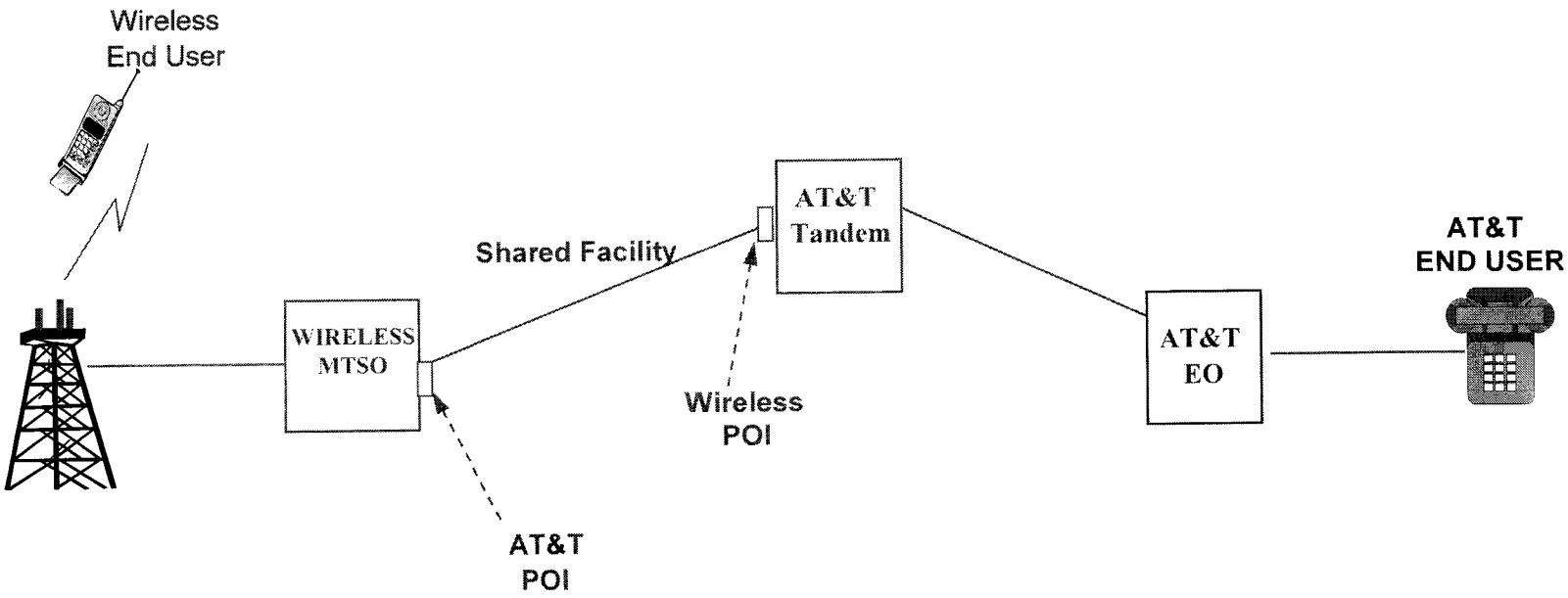
---

[15] This exhibit does not address other types of traffic, including without limitation transit traffic, that Nextel would exchange with AT&T South Carolina.

The Sprint ICA that Nextel seeks to adopt provides a 50-50 shared facilities factor, which means that Sprint and AT&T South Carolina each bear half the cost of the facility. This factor is rational and appropriate when the traffic exchanged between the carriers is roughly balanced. When the traffic is not balanced, however, this factor is neither rational nor appropriate. If, for example, 80% of the traffic is going from the wireless carrier to the wireline carrier, the wireless carrier should bear more of the cost of the facility than AT&T South Carolina, and a 50-50 split would cause AT&T South Carolina to incur more costs than it should.

EXHIBIT 1

Wireless Interconnection



at&t

ATTACHMENT B

ATTACHMENT B

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER IN THE INTERCONNECTION AGREEMENT BETWEEN SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P AND AT&T SOUTHEAST DATED JANUARY 1, 2001

Prepared 2/20/08

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
General Terms and Conditions – Part A	4. Ordering Procedures	8	Reference to ordering procedures in Attachment 6 for Sprint CLEC
	5. Parity 5.1 and 5.2	8	Resale services at parity with that provided to AT&T's own affiliates, subsidiaries, and end users. Quality of Network Element and access to same shall be at least equal to that which AT&T provides itself or such access as would provide efficient carrier meaningful opportunity to compete.
	6. White Pages Listings 6.1 – 6.10	9	White pages listings
	7. Bona Fide Request/New Business Request for Further Unbundling Subsection of 7.1	10	Products and services made available to other CLECs shall be made available to Sprint on same rates, terms and conditions through an amendment.
	24. Network Security 24.2.1 24.2.2 24.2.2.1 24.2.3	28	Fraud protection available for resold AT&T services and AT&T's ports used by Sprint will be available to Sprint. Parties will cooperatively work together in fraud situations. Liability for provisioning, maintenance, signal network routing errors, accidental or malicious alternation of software underlying Network Elements or subtending operational support systems causing financial loss. AT&T responsibility from unauthorized attachment to loop facilities from Main Distribution Frame to Network Interface Device.

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
Resale – Attachment 1	Entire Resale Document	46 - 77	Provides rates, terms and conditions for the resale of AT&T telecommunications services provided at a discount off the retail rates and associated services.
Network Elements and Other Services – Attachment 2	Entire Document - Network Elements and Other Services	78 - 502	Provides rates, terms an conditions for offered Network Elements used in the provision of telecommunications services
Network Interconnection – Attachment 3	1. Definitions CLEC Local Traffic Transit Traffic Virtual Point of Interconnection	506, 507	Definition of terms used in Network Interconnection
	2. Network Interconnection 2.2.1 2.6 Interconnection via Leased Dedicated Transport Facilities 2.6.1, 2.6.1.1, 2.6.1.2 2.7 Fiber Meet Interconnection 2.7.1, 2.7.2 2.7.3 2.7.3.1, 2.7.3.2	508 510 510 511	Interconnection of respective Sprint CLEC and AT&T networks -Call transport and termination facilities and threshold to utilize dedicated transport facilities; determination of facilities utilized for Local Traffic determined based upon Percent Local Facility Factor. -Occurs at mutually agreeable, economically and technically feasible point between Sprint CLEC premise and AT&T Tandem or End Office within LATA. -Joint engineering and Synchronous Optical Network transmission system. -Two Fiber Meet design options.

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	2.7.4, 2.7.5 2.7.6 2.7.7 2.7.8 2.7.9 2.7.10 2.7.11 2.7.12		-Each parties' responsibilities with respect to SONET equipment. -Point of Interconnection for Fiber Meet point. -Responsibility of maintenance of fiber optic facility. -Establishment of timing sources -Mutual agreement on capacity of the FOT, optical frequency and wavelength, methods for capacity planning and management of facilities. -Coordination and maintenance of SONET. -Responsibility of providing respective transport facilities to Fiber Meet and cost to build-out. -Responsibility for costs of respective portions of Fiber Meet facility used for non transit Local Traffic.
	2.8 Points of Interconnection 2.8.1, 2.8.1.1, 2.8.1.2	512 513	Number, location and selection of Physical Point of Interconnection and criteria for additional points of interconnection within a LATA.
	2.9 Interconnection Trunking 2.9.1, 2.9.2 2.9.3 2.9.4 2.9.5 2.9.5.1	513 514	Interconnection Trunking -Establishment of most efficient trunking network; Bona Fide Request/New Business Request -Signaling System 7 capable provisioning -Trunk group configuration -Rate references -Two-way trunking carrying Local and

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
			IntraLATA Toll Traffic, excluding Transit Traffic and for two-way Supergroup carrying Local and IntraLATA Toll Traffic and Sprint CLEC Transit Traffic, compensation for trunks and facilities will be 50%.
	2.9.6 One-way and Two-way Trunking	514	
	2.9.6.1, 2.9.6.1.1, 2.9.6.1.2, 2.9.6.1.3, 2.9.6.1.4	515	-One-way trunking
	2.9.6.2, 2,9.6.2.1, 2.9.6.2.1.1, 2.9.6.2.1.1.1, 2.9.6.2.1.1.2, 2.9.6.2.1.1.3, 2.9.6.2.1.2, 2.9.6.2.1.2.1, 2.9.6.2.1.2.2, 2.9.6.2.1.2.3, 2.9.6.2.2, 2.9.6.2.3, 2.9.6.2.4, 2.9.6.2.4.1, 2.9.6.3	516	-Two-way
	2.9.7 Transit Trunk Groups 2.9.7.1, 2.9.7.2		-Transit Trunk Groups
	2.9.7.3 Toll Free Traffic 2.9.7.3.1, 2.9.7.3.2, 2.9.7.3.3, 2.9.7.3.4	517	-Toll Free Traffic
	2.9.8 Access Tandem Interconnection Trunking 2.9.8.1		-Access Tandem interconnection Trunking
	2.9.8.2 SuperGroup Interconnection Trunking 2.9.8.2.1, 2.9.8.2.2, 2.9.8.2.2.1, 2.9.8.2.2.2, 2.9.8.2.2.3, 2.9.8.2.3, 2.9.8.2.3.1, 2.9.8.2.3.2, 2.9.8.2.3.3, 2.9.8.2.4, 2.9.8.2.5, 2.9.8.2.6, 2.9.8.2.7	518 519	-SuperGroup Interconnection Trunking

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	2.9.8.3 2.9.8.3.1 2.9.8.4		-Terminations of interconnection trunking at single point in LATA -Switched Access traffic delivery to and by IXCs
	2.9.10 AT&T Local Tandem Interconnection Trunking 2.9.10.1, 2.9.10.2, 2.9.10.3		-Local Tandem Interconnection Trunking
	2.9.11 Direct End Office Interconnection Trunking 2.9.11.1, 2.9.11.2, 2.9.11.3, 2.9.11.4, 2.9.11.5, 2.9.11.6, 2.9.11.6.1, 2.9.11.6.2, 2.9.11.6.3, 2.9.11.6.4	520 521	-Direct End Office Interconnection Trunking
	2.9.12 Other Interconnection Trunk Groups		-Other Interconnection Trunk Groups
	2.9.12.1, 2.9.12.1.1, 2.9.12.1.2, 2.9.12.1.3	522	-E911 Trunking
	2.9.12.2.3, 2.9.12.2.4, 2.9.12.2.5	523	-Acquisition of HVCI/Mass Calling customers
	2.9.12.3 2.9.12.3.1, 2.9.12.3.2, 2.9.12.3.3, 2.9.12.3.3.1, 2.9.12.3.4, 2.9.12.3.4.1 2.9.12.3.5, 2.9.12.3.5.1, 2.9.12.3.6, 2.9.12.3.6.1, 2.9.12.3.7, 2.9.12.3.7.1	524	-Operator Services/Directory Assistance Trunk Groups
	2.9.13 Trunk Servicing 2.9.13.1, 2.9.13.2, 2.9.13.3, 2.9.13.4	525	-Trunk Servicing
	3. Network Design and Management for CLEC Interconnection	526	Network Design and Management for CLEC Interconnection

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	3.1 Network Management and Changes		-Network Management and Changes
	3.2 Interconnection Technical Standards		-Interconnection Technical Standards
	3.3 Quality of Interconnection		-Quality of Interconnection
	3.4 Network Management Controls 3.4.1, 3.4.1.1, 3.4.2, 3.4.2.1, 3.4.3, 3.4.3.1	527	-Network Management Controls
	3.5 Common Channel Signaling 3.5.1, 3.5.2		-Common channel Signaling
	3.6 Forecasting Requirements 3.6.1, 3.6.2, 3.6.3	528	-Forecasting Requirements
	6.1.3 Interconnection Compensation	531	-Transport charges
	6.1.5 6.1.5.1		-Jurisdiction of call determined by originating terminating points
	6.2 Percent Local Use	532	-Percent Local Use factor determines amount of local minutes to be billed other Party
	6.3 Percent Local Facility		-Percent Local Facility factor determines Portion of switched transport to be billed per local jurisdiction rates
	6.4 Percentage Interstate Usage		-Percent Interstate Usage determines interstate and intrastate traffic
	6.6 Rate True-up 6.6.1, 6.6.2, 6.6.3, 6.6.4	533 534	-Criteria for trueing up interim prices

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	6.8 Compensation for CLEC IntraLATA Toll Traffic 6.8.1, 6.8.2, 6.8.3, 6.8.4, 6.8.5	535	-Compensation for CLEC IntraLATA Toll Traffic
	6.9 Mutual Provision of Switched Access Service for Sprint CLEC and AT&T 6.9.1, 6.9.1.1, 6.9.2, 6.9.3, 6.9.4, 6.9.5, 6.9.6, 6.9.7	536 537	-Mutual Provision of Switched Access Service for Sprint CLEC and AT&T
	6.10 Transit Traffic Service 6.10.1		-Transit Traffic Service
	6.12 OO- Local Traffic	539	-00- Local Traffic
	7. Operational Support Systems (OSS) Rates	539	Operational Support systems (OSS) Rates
	Local Interconnection Rates	540 - 552	Local Interconnection Rate Exhibits by State
Collocation Rates – Attachment 4 – Exhibit D	Collocation Rates - Exhibit D	640 - 675	Collocation Rates
Access to Numbers and Number Portability – Attachment 5	8. True-up 8.1, 8.2, 8.3	686 687	True up of Rates
Ordering and Provisioning – Attachment 6	1. Quality of Ordering and Provisioning 1.1, 1.2, 1.3, 1.4, 1.4.1, 1.5	697 699	Quality of Ordering and Provisioning
	2. Access to Operational Support Systems (OSS) 2.1, 2.1.1 2.2 Pre-Ordering 2.3 Service Ordering and Provisioning	700 701	Access to Operational Support Systems (OSS)

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	2.4 Service Trouble Reporting and Repair 2.5 Migration of Sprint to New AT&T Software Releases for National Standard Machine-to-Machine Electronic Interfaces 2.6 Change Management 2.7 Testing 2.7.1, 2.7.1.1, 2.7.1.2, 2.7.1.3, 2.7.1.4 2.8 OSS Documentation 2.9 OSS Servers with Redundancy 2.10 Rates	702	
	3. Miscellaneous Ordering and Provisioning Guidelines 3.1, 3.2, 3.3, 3.3.1, 3.3.1.1, 3.3.1.2, 3.3.1.3, 3.4 Contact Numbers 3.5 Subscription Functions 3.6 Cancellation Charges 3.7 Acknowledgement 3.8, 3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18, 3.19 Operational Support Systems	703 704	Miscellaneous Ordering and Provisioning Guidelines
Billing and Billing Accuracy Certification – Attachment 7	1. CLEC Payment and Billing Arrangements 1.1 Billing 1.1.1, 1.1.2 1.2, 1.3, 1.4 Payment Responsibility 1.5, 1.6, 1.7, 1.8, 1.9 1.10 Payment Due	707 709 710	CLEC Payment and Billing Arrangements

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
	1.11 Tax Exemption 1.13 Late Payment 1.14 Discontinuing Service to Sprint 1.14.1, 1.14.2, 1.14.3, 1.14.4, 1.14.5 1.15 Deposit Policy 1.15.1, 1.15.2, 1.15.3, 1.15.4, 1.15.5, 1.15.6 1.16 Rates for ODUF/EODUF ADUF	712	
	9. Optional Daily Usage File 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7 9.7.1, 9.7.1.1, 9.7.1.2, 9.7.1.3, 9.7.1.4 9.7.2, 9.7.2.1, 9.7.2.2 9.7.3, 9.7.3.1, 9.7.3.2 9.7.4, 9.7.4.1 9.7.5, 9.7.6, 9.7.6.1	718	Optional Daily Usage Files
	10. Access Daily Usage File 10.1, 10.2, 10.3, 10.4, 10.5 10.6, 10.6.1, 10.6.2, 10.6.3, 10.6.4, 10.6.5, 10.6.5.1, 10.6.5.2, 10.6.6, 10.6.6.1, 10.6.6.2, 10.6.7, 10.6.7.1, 10.6.8, 10.6.9, 10.6.9.1	721	Access Daily Usage Files
	11. Enhanced Optional Daily Usage File 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.6.1.1, 11.6.1.2, 11.6.1.3, 11.6.2, 11.6.2.1, 11.6.2.2, 11.6.3, 11.6.3.1, 11.6.3.2	723	Enhanced Optional Daily Usage Files
	12. Rate True-up 12.1, 12.2, 12.3, 12.4	725	Rate True-up
	Exhibit A – ODUF/ADUF/EODUF/CMDS Rates	727	ODUF/ADUF/EODUF/CMDS Rates

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
Performance Measurements – Attachment 9	Performance Measurements Information	782	Performance Measurements Information
Agreement Implementation Template – Attachment 10	Template to catalog implementation activities	784	Implementation Activities Template
AT&T Disaster Recovery Plan – Attachment 11	1. Purpose 2. Single Point of Contact 3. Identifying the Problem 3.1 Site Control 3.2 Environmental Concerns 4. The Emergency control Center 5. Recovery Procedures 5.1 CLEC Outage 5.2 AT&T Outage 5.2.1, 5.2.2, 5.2.3, 5.2.4 5.3 Combined Outage 6. Identification Procedures 7. Acronyms Hurricane Information AT&T Disaster Management Plan	799	Disaster Recovery Plans
Amendment Effective May 7, 2003 Affecting Network Elements and Other Services – Attachment 2	2.1.1, 2.1.1.1, 2.1.1.2, 2.1.1.3, 2.1.1.4	810	Provides for AT&T to provide new UNE loops without local usage restrictions under certain conditions
Amendment Effective September 1, 2003 Adding Network Elements and Other Services Rates – Attachment 2, Exhibit B	GA and NC Network Elements Rates	812	Added port and combination rates in GA and NC
Amendment Effective December 3, 2003 adding and replacing language/exhibits In Resale, Attachment 1, Network Elements and Other Services,	Resale - Attachment 1 4.4 Service Jointly Provisioned with an Independent Company or Competitive Local Exchange Company Areas	816	Service jointly provisioned

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
Attachment 2, and Billing, Attachment 7	4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5 Replace Exhibit C – LIDB Resale Storage Agreement		 LIDB Resale Storage Agreement
	Network Elements and Other Services - Attachment 2 Delete 1.4.1, 1.4.2 Add 8.6 Replace 13.2.1, 13.2.2, 13.2.4, 13.2.5 Replace 13.6 Rates for EELs Add 13.7 Other UNE Combinations Replace 14.1, 14.2		 -Line Splitting -Currently Combined, Ordinarily Combined, Not Typically Combined -Rates for EELs -Other UNE Combinations -Combinations of port and Loop UNEs
	Billing – Attachment 7 Replace 1.15 Deposit Policy		 Deposit Policy
Amendment Effective August 23, 2004 Deleting Certain Rates and Adding Language in Network Elements and Other Services, Attachment 2	Attachment 2, Exhibit A Delete Local Number Portability USOCs and Charges Add 9.9 – Local Number Portability Add 14.4	836	Deleted USOCs and Rates for Local Number Portability References Local Number Portability Charges in AT&T FCC Tariff
Amendment Effective February 10, 2005 Affecting Rates in Network Elements and Other Services, Attachment 2, Exhibit A	Incorporated QuickServe Rates into Attachment 2, Exhibit A, Network Elements and Other Services	841	QuickServe Rates in Attachment 2, Exhibit A
Amendment Effective March 3, 2005 Adding Language and Rates to Network Elements and Other Services, Attachment 2	Add to Attachment 2 11.1.1 Melded Tandem Switching Add Melded Tandem Switching Rates	862	Melded Tandem Switching Language and Rates
Amendment Effective March 11, 2006 Modifying Provisions Pursuant to the	General Terms and Conditions Replace 17 Adoption of Agreements	873	Replace Adoption of Agreements Language

SUMMARY OF CONTRACT LANGUAGE THAT WOULD NOT APPLY TO A CMRS PROVIDER
IN THE INTERCONNECTION AGREEMENT
BETWEEN
SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP, SPRINT COMMUNICATIONS COMPANY L.P AND SPRINT SPRECTRUM L.P
AND
AT&T SOUTHEAST
DATED JANUARY 1, 2001

MAJOR SECTION NAME	SUB-SECTION	PDF PAGE NUMBER	DESCRIPTION
FCC TRRO Released February 4, 2005 and Effective March 11, 2005 and Incorporating Other Provisions Affecting General Terms and Conditions and Network Elements and Other Services, Attachment 2	Move 20 and 21 and associated rates from Network Elements and Other Services, Attachment 2, to Become New Sections 8 and 9 and new rates in Local Interconnection, Attachment 3 Replace Network Elements and Other Services Ordering, Attachment 6 Replace First Sentence of 1.1		-Move SS7 Network Interconnection language and rates from Network Elements and Other Services, Attachment 2, to Local Interconnection, Attachment 3 -Move Basic 911 and E911 language and rates from Network Elements and Other Services, Attachment 2, to Local Interconnection, Attachment 3 -Replace Network Elements and Other Services, Attachment 2 -Nondiscriminatory access to AT&T's OSS
Amendment Effective November 15, 2006 Modifying Factors in Local Interconnection, Attachment 3	Local Interconnection Modifies 6.2, 6.3, 6.4	1166	Modifies PIU/PLU/PLF language in Local Interconnection, Attachment 3

ATTACHMENT C

ATTACHMENT C

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Petition for Declaratory Ruling That Sprint Nextel Corporation, Its Affiliates, And Other Requesting Carriers May Not Impose A Bill-and-Keep Arrangement Or A Facility Pricing Arrangement Under The Commitments Approved By The Commission In Approving The AT&T-BellSouth Merger	)	WC Docket No. _____

PETITION OF THE AT&T ILECS FOR A DECLARATORY RULING

Terri L. Hoskins
Gary L. Phillips
Paul K. Mancini
AT&T INC.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-3810

Theodore A. Livingston
Dennis G. Friedman
Demetrios G. Metropoulos
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600

Counsel for the AT&T ILECs

February 5, 2008

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY

Among the many commitments adopted in the *AT&T/BellSouth Merger Order* was a group of four commitments that were intended to reduce transaction costs associated with the negotiation and execution of interconnection agreements. One of those commitments, Commitment 7.1, allows CLECs to port interconnection agreements from one AT&T state to another, subject to, *inter alia,* state-specific pricing and consistency with the laws and regulatory requirements of the state to which the agreement is to be ported.

This petition for declaratory ruling is necessary because Sprint Nextel, in defiance of the express terms and stated purpose of Commitment 7.1, is attempting to turn that commitment into a vehicle for reciprocal compensation arbitrage and other unwarranted subsidies, including economically irrational pricing of shared interconnection facilities. Sprint Nextel's ploy is an attempt to "port" to each of the 13 legacy AT&T ILEC states a bill-and-keep arrangement and a provision allowing for the equal sharing of the costs of interconnection facilities (facility pricing arrangement), which were included in interconnection agreements between each of the BellSouth ILECs, on the one hand, and two Sprint affiliates (Sprint CLEC and Sprint PCS), on the other.[1] Both the bill-and-keep arrangement and the facility pricing arrangement were predicated on specific assumptions by BellSouth about the balance of traffic between the BellSouth ILECs and the two Sprint entities within the BellSouth region. They are thus pricing arrangements that are specific, not only to the BellSouth states, but to the two Sprint affiliates that were the original parties to the agreement. For example, the bill-and-keep provision was based on an analysis showing that traffic flows between the BellSouth ILECs and the two Sprint affiliates were roughly in balance. The provision even includes language stating that the arrangement shall be

---

[1] Although substantially the same agreement is in place in each of the former BellSouth ILEC states, Sprint Nextel's efforts have focused on the ICA between AT&T Kentucky and the two Sprint affiliates.

terminated if one of the two Sprint entities opts into another agreement, since that would upset the balance of traffic between the contracting parties.

Sprint Nextel nonetheless claims that Commitment 7.1 allows it to port these BellSouth-specific pricing arrangements to other states where the traffic exchanged by Sprint Nextel and AT&T is decidedly *out of balance* or otherwise inconsistent with the traffic flows on which the original agreements were premised. Indeed, Sprint Nextel goes so far as to claim that Commitment 7.1 wipes out all substantive Commission rules governing adoptions *even within a state,* and, based on that misreading of Commitment 7.1, is seeking to extend the two pricing provisions to other Sprint Nextel affiliates within each of the BellSouth states via in-state adoptions.

The Commission has devoted considerable effort to eliminating opportunities for reciprocal compensation and other arbitrage. It would be an affront to the spirit and the letter of Merger Commitment 7.1 if that commitment were allowed to become a vehicle for circumventing the Commission's substantive rules and creating yet another arbitrage.

To prevent this from occurring, the Commission should issue declaratory rulings that:

(1) bill-and-keep arrangements for the transport and termination of telecommunications and facility pricing arrangements are "state-specific pricing" terms that are not subject to porting under Commitment 7.1 to other states;

(2) Commitment 7.1 does not give a carrier the right to port an agreement from one state to another if that carrier would be barred by Commission rules implementing Section 252(i) of the Telecommunications Act of 1996 from adopting that agreement within the same state; and

(3) Commitment 7.1 does not apply to in-state adoptions of interconnection agreements or in any way supersede Commission rules governing such adoptions.

BACKGROUND

A. Merger Commitment 7.1

As a condition to its December 29, 2006, approval of the merger between AT&T Inc. and BellSouth Corporation, this Commission accepted certain commitments offered by AT&T Inc. and BellSouth. *In re AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, 22 FCC Rcd 5662, ¶ 222 (2007). One of those commitments, Commitment 7.1, is among a group of commitments set forth under the bold-face heading "**Reducing Transaction Costs Associated with Interconnection Agreements.**" *Id.* Appendix F, at 149.[2] The text of that commitment provides (*id.*):

> The AT&T/BellSouth ILECs shall make available to any requesting telecommunications carrier any entire effective interconnection agreement, whether negotiated or arbitrated, that an AT&T/BellSouth ILEC entered into in any state in the AT&T/BellSouth 22-state ILEC operating territory, subject to state-specific pricing and performance plans and technical feasibility, and provided, further, that an AT&T/BellSouth ILEC shall not be obligated to provide pursuant to this commitment any interconnection arrangement or UNE unless it is feasible to provide, given the technical, network, and OSS attributes and limitations in, and is consistent with the laws and regulatory requirements of, the state for which the request is made.

This commitment was derived from a package of proposals submitted by a collaboration of cable operators seeking to "[r]educe the [c]ost and [d]elay of [n]egotiating interconnection agreements."[3] The cable operators claimed that they experienced delays and increased costs associated with negotiating interconnection agreements and argued that allowing them, *inter*

---

[2] The merger commitments are grouped into several categories. Merger Commitment 7.1 is item 1 in the seventh category.

[3] *See Ex Parte Presentation* - WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, filed by Michael Pryor, Mintz Levin (Sept. 27, 2006) at p. 11. *See also* Notice of Oral *Ex Parte* Presentation - WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, filed by Michael H. Pryor, Mintz Levin (October 3, 2006) at p. 2; Comments On AT&T's Proposed Conditions, filed by Advance/Newhouse Communications, Cablevision Systems Corporation, Charter Communications, Cox Communications, and Insight Communications Company (October 24, 2006) at pp. 8-11.

alia, to port interconnection agreements across state boundaries, subject to technical feasibility and state-specific pricing and performance plans, would allow them to enter the market more quickly.[4] Some CLECs also supported this proposal, repeating the cable operators' argument that it would reduce the burdens associated with negotiating interconnection agreements.[5] Notably all proponents of this commitment recognized that it should not apply to state-specific pricing, and the commitment on its face specifically excludes state-specific pricing from its scope.

B. The Kentucky Bill-and-Keep Arrangement and Facility Pricing Arrangement.

The dispute here centers on whether the porting commitment set forth above applies to pricing provisions contained in an interconnection agreement between AT&T Kentucky (f/k/a BellSouth) and two Sprint-affiliated entities: a competing local exchange carrier (identified in the agreement as "Sprint CLEC") and a commercial mobile radio service ("CMRS") provider (identified in the agreement as "Sprint PCS"). The Kentucky ICA is the Kentucky version of a nine-state agreement entered in 2001 between the former BellSouth ILECs, Sprint CLEC and Sprint PCS to govern the three parties' relationships in the nine southeastern states in the former

---

[4] *Ex Parte Presentation* - WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, filed by Michael Pryor, Mintz Levin (Sept. 27, 2006) at p. 12.

[5] Some CLECs also argued that the proposal would help address the ostensible loss of benchmarking capabilities that would result from the merger. They claimed that allowing CLECs to adopt interconnection agreements across state lines "would permit CLECs to preserve at least for the duration of the interconnection agreement the best respective practices of either of the merged companies in any state." *See, e.g,* December 22, 2006 *ex parte* letter submitted jointly by Access Point, Inc., CAN Communications Services, Inc., Cavalier Telephone, LLC, DeltaCom, Inc., Florida Digital Network Inc. d/b/a FDN Communications, Inc., Globalcom Communications, Inc., and Pac-West Telecomm, Inc. In so arguing, CLECs pointed to analogous merger conditions from the Ameritech/SBC and Bell Atlantic/GTE mergers as justification and precedent for the proposed porting request. *See* Comments of CompTel, Oct. 25, 2006 at 25-26 ("In prior BOC to BOC mergers, the loss of the competitive benchmarking tool has been partially offset by enabling CLECs to "port" interconnection agreements from the region of one of the merging parties to the region of the other merging party.").

BellSouth region. Although that agreement expired in 2004, and although Sprint Nextel and AT&T had all but finalized a successor agreement as of the closing date of the AT&T/BellSouth merger, Sprint Nextel was able to take advantage of another merger commitment (Commitment 7.4) to obtain a three-year extension of that seven-year old agreement. On November 7, 2007, the Kentucky Public Service Commission approved this extension.

The bill-and-keep provision at issue appears in Kentucky ICA Attachment 3, Section 6.1, which governs reciprocal compensation for call transport and termination for: CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic. When BellSouth, Sprint PCS and Sprint CLEC entered into that agreement, their traffic was roughly balanced throughout the nine-state BellSouth region, as was the balance of compensation payments for such traffic. In light of that balance, the three parties agreed that the reciprocal compensation arrangement in the BellSouth states would be bill-and-keep. Indeed, Section 6.1 expressly states that the bill-and-keep arrangement set forth therein would be subject to termination if either Sprint PCS or Sprint CLEC opted into another interconnection arrangement that provides for reciprocal compensation insofar as that would upset the balance on which the agreement was premised.

> 6.1 Compensation for Call Transport and Termination for CLEC Local Traffic, ISP-Bound Traffic and Wireless Local Traffic is the result of negotiation and compromise between BellSouth, Sprint CLEC and Sprint PCS. The Parties' agreement to establish a bill and keep compensation arrangement was based upon extensive evaluation of costs incurred by each party for the termination of traffic. Specifically, Sprint PCS provided BellSouth a substantial cost study supporting its costs. As such the bill and keep arrangement is contingent upon the agreement by all three Parties to adhere to bill and keep. Should either Sprint CLEC or Sprint PCS opt into another interconnection arrangement with BellSouth pursuant to 252(i) of the Act which calls for reciprocal compensation, the bill and keep arrangement between BellSouth and the remaining Sprint entity shall be subject to termination or renegotiation as deemed appropriate by BellSouth.

Consistent with the parties' treatment of their reciprocal compensation obligations to each other as a wash in light of the balance of traffic, the parties also agreed to share equally the

cost of interconnection facilities between BellSouth and Sprint PCS switches within BellSouth's service area. Accordingly, the Kentucky ICA provides, in pertinent part, as follows for Sprint PCS and for Sprint CLEC, respectively:

> The cost of the interconnection facilities between BellSouth and Sprint PCS switches within BellSouth's service area shall be shared on an equal basis. (Section 2.3.2)
>
> For two-way interconnection trunking that carries the Parties' Local and IntraLATA Toll Traffic only, excluding Transit Traffic, and for the two-way Supergroup interconnection trunk group that carries the Parties' Local and IntraLATA Toll Traffic, plus Sprint CLEC's Transit Traffic, the Parties shall be compensated for the nonrecurring and recurring charges for trunks and facilities at 50% of the applicable contractual or tariff rates for the services provided by each Party. (Section 2.9.5.1)

C. Sprint's Attempt To Transplant The Kentucky Arrangement Out Of Its Highly Fact-Specific Context.

In 2005, Sprint acquired Nextel (another wireless carrier) and became Sprint Nextel. On October 26, 2007, Sprint Nextel filed a Complaint and Request for Expedited Ruling in the Public Utilities Commission of Ohio, seeking to "port" the Kentucky ICA (including its bill-and-keep and facility pricing arrangement) to Ohio.[6] Sprint Nextel sought, moreover, not only to port BellSouth-specific pricing arrangements outside the BellSouth area, but to couple that port with a critical substantive change to the Kentucky arrangement, by proposing to drastically change the mix of parties – and thus, the balance of traffic to be exchanged – that would be subject to bill-and-keep and the 50/50 facility pricing arrangement. Specifically, the Ohio Complaint sought to add other affiliates, including Nextel, to the combination of one Sprint CLEC and one Sprint CMRS provider on which the Kentucky agreement was founded.

---

[6] *In re Carrier-to-Carrier Complaint and Request for Expedited Ruling of Sprint Commun's Co. v. Ohio Bell Tel. Co. d/b/a AT&T of Ohio, Relative to the Adoption of an Interconnection Agreement*, Case No. 07-1136-TP-CSS (Ohio Pub. Util. Comm'n filed Oct. 26, 2007)(Ohio Complaint).

On November 20, 2007, Sprint Nextel sent AT&T a letter indicating that Sprint Nextel affiliates wished to "port" the Kentucky ICA to other states served by AT&T ILECs.[7] Although the precise legal entities differ between states, the linchpin of Sprint's proposal was its attempt to port the BellSouth bill-and-keep arrangement and facility pricing arrangement with Sprint PCS and Sprint CLEC to other Sprint affiliates in non-BellSouth states, and to add Nextel to the mix of parties to the arrangement. Sprint Nextel's transparent purpose was arbitrage. On December 13, 2007, AT&T sent Sprint Nextel a letter indicating that Sprint Nextel's November 20 request was improper and asking Sprint Nextel to identify the one CMRS provider that would be the party to the port in order for AT&T to process the request.[8]

Notwithstanding AT&T's response, in December 2007 and early January 2008 Sprint Nextel initiated proceedings mirroring Sprint Nextel's Ohio Complaint (described above) in the 12 other legacy AT&T states.[9] Together with Ohio, those proceedings are now ongoing in all of

---

[7] See Exhibit 1.

[8] See Exhibit 2. Although Commitment 7.1 does not permit Sprint Nextel to port any state-specific pricing arrangement – even to the same entities – AT&T was particularly concerned, as a practical matter, with Sprint Nextel's attempt to add affiliates whose traffic was out of balance with AT&T. AT&T's response accordingly focused on this aspect of Sprint Nextel's proposal.

[9] See *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Arkansas*, Docket No. 07-161-C (Ark. Pub. Serv. Comm'n filed Dec. 20, 2007); *Application of Sprint Commun's Co. et al. for Comm'n Approval of an Interconnection Agreement with Pacific Bell Tel. Co. d/b/a AT&T California pursuant to the "Port-In Process" Voluntarily Created and Accepted by AT&T Inc. as a Condition of Securing Federal Commun's Comm'n Approval of AT&T Inc.'s Merger with BellSouth Corp.*, Application No. 07-12-017 (Cal. Pub. Util. Comm'n filed Dec. 20, 2007); *Application of Sprint Commun's Co. et al. for An Order Compelling The Southern New England Bell Tel. Co. d/b/a AT&T Connecticut to Enter an Interconnection Agreement on Terms Consistent with Federal Commun's Comm'n Orders*, Docket No. 07-12-19 (Conn. Dep't of Pub. Util. Control filed Dec. 14, 2007); *Sprint Commun's Co. v. Illinois Bell Tel. Co. d/b/a AT&T Illinois*, Docket No. 07-0629 (Ill. Comm. Comm'n filed Dec. 28, 2007); *Sprint Commun's Co. v. Indiana Bell Tel. Co. d/b/a AT&T Indiana*, Cause No. 43408 (Ind. Util. Reg. Comm'n filed Dec. 19, 2007); *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Kansas*, Docket No. 08-SWBT-602-COM (Kan. Corp. Comm'n filed Dec. 26, 2007); *Complaint of Sprint Commun's Co. et al. against Michigan Bell Tel. Co. d/b/a AT&T Michigan*, Case No. U-15491 (Mich. Pub. Serv. Comm'n filed Dec. 21, 2007); *Sprint Commun's Co. v. Sw. Bell Tel. Co. d/b/a AT&T Missouri*, Case No. TC-2008-0182 (Mo. Pub. Serv. Comm'n filed Dec. 10, 2007); *Sprint Commun's Co. v. Nevada Bell Tel. Co. d/b/a AT&T Nevada*, Docket No. 08-01001 (Nev. Pub. Util. Comm'n filed Jan. 2, 2008); *Application of Sprint Commun's Co. et al. for Approval of Interconnection Agreement with AT&T Oklahoma*, Cause No.

the states that were served by AT&T ILECs prior to the merger between AT&T Inc. and BellSouth Corp. In addition, Nextel, which is not a party to the BellSouth agreement, has initiated proceedings in all nine AT&T ILEC states in the former BellSouth region, seeking to adopt the agreement in each state pursuant to Commitment 7.1.[10] In those proceedings, Nextel

---

PUD 200700454 (Okla. Corp. Comm'n filed Dec. 14, 2007); *Sprint's Complaint for Post-Interconnection Dispute Resolution with Sw. Bell Tel. Co., d/b/a AT&T Texas, Regarding Adoption of Interconnection Agreement Pursuant to Merger Conditions*, Docket No. 35112 (Tex. Pub. Util. Comm'n filed Dec. 12, 2007); *Sprint Commun's Co. v. Wisconsin Bell, Inc. d/b/a AT&T Wisconsin*, Docket No. 6720-TI-211 (Wisc. Pub. Serv. Comm'n filed Dec. 19, 2007).

[10] See *Nextel South Corp. Notice of Adoption of Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. TBD (Al. Pub. Serv. Comm'n filed June 26, 2007); *NPCR, Inc. Notice of Adoption of Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. TBD (Al. Pub. Serv. Comm'n filed June 26, 2007); *Notice of Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 200l*, Docket No. 070368-TP (Fl. Pub. Serv. Comm'n filed June 8, 2007); *Notice of Adoption by Nextel South Corp and Nextel West Corp., (collectively "Nextel") of the Existing "Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 200l*, Docket No. 070369-TP (Fl. Pub. Serv. Comm'n filed June 8, 2007); *Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast*, Docket No. 25430-U (Ga. Pub. Serv. Comm'n filed June 21, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Georgia d/b/a AT&T Southeast*, Docket No. 25431-U (Ga. Pub. Serv. Comm'n filed June 21, 2007); *Notice of Adoption by Nextel West Corp. ("Nextel") of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 2001*, Case No. 2007-00255 (Ky. Pub. Serv. Comm'n filed June 21, 2007); *Notice of Adoption by NPCR, Inc. d/b/a Nextel Partners of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al. dated January 1, 2001*, Case No. 2007-00256 (Ky. Pub. Serv. Comm'n filed June 21, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Louisiana d/b/a AT&T Southeast* Docket No. U-30185 (La. Pub. Serv. Comm'n filed June 26, 2007); *Petition for Approval of Nextel Partners' Adoption of the Interconnection Agreement between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T Louisiana d/b/a AT&T Southeast* Docket No. U-30186 (La. Pub. Serv. Comm'n filed June 26, 2007); *NPCR, Inc. ("Nextel Partners") Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.* Docket No. 2007-UA-316 (Ms. Pub. Serv. Comm'n filed June 28, 2007); *Nextel South Corp. ("Nextel") Petition for Adoption of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. 2007-UA-317 (Ms. Pub. Serv. Comm'n filed June 28, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Commun's Co. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T North Carolina d/b/a AT&T Southeast* Docket No. P-55, Sub 1710 (NC Pub. Util. Comm'n filed June 22, 2007); *Petition for Approval of Nextel South Corp.'s Adoption of the Interconnection Agreement Between Sprint Commun's L.P. et al. and BellSouth Telecommun's, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast* Docket No. 2007-255-C (SC Pub.

maintains that even if it would not be permitted to adopt the BellSouth agreement pursuant to Section 252(i) of the Telecommunications Act of 1996 (which it would not, because AT&T's cost of providing the agreement to Nextel would be greater than AT&T's cost of providing the agreement to the original parties[11]) it can nonetheless adopt the agreement pursuant to Commitment 7.1, because Commitment 7.1 is, in Nextel's view, not subject to the limitations the Commission has applied to Section 252(i).[12]

In contrast with the rough balance of traffic and compensation payments that prevailed between BellSouth and Sprint CLEC and Sprint PCS under the BellSouth agreement, the AT&T ILECs in the 13 legacy AT&T states terminate much more traffic for the Sprint Nextel companies in the aggregate than the Sprint Nextel companies terminate for the AT&T ILECs in those states. As a result, if Sprint Nextel were permitted to port the bill-and-keep arrangement in the BellSouth agreement pursuant to Commitment 7.1, Sprint Nextel would be getting a free ride for every one of the millions of minutes of traffic that the AT&T ILECs terminate for Sprint/Nextel that is in excess of the minutes of traffic that Sprint Nextel terminate for the AT&T ILECs. Likewise, Sprint Nextel make much more relative use of the interconnection facilities

---

Serv. Comm'n. filed June 28, 2007); *Petition for Approval of NPCR, Inc. d/b/a Nextel Partners' Adoption of the Interconnection Agreement Between Sprint Commun's L.P. et al., and BellSouth Telecommun's, Inc. d/b/a AT&T South Carolina d/b/a AT&T Southeast* Docket No. 2007-256-C (SC Pub. Serv. Comm'n. filed June 28, 2007); *Nextel South Corp.'s Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. 07-00161 (Tn. Reg. Auth. filed June 21, 2007). *NPCR, Inc. d/b/a Nextel Partners' Notice of Election of the Existing Interconnection Agreement By and Between BellSouth Telecommun's, Inc. and Sprint Commun's Co. et al.*, Docket No. 07-00162 (Tn. Reg. Auth. filed June 21, 2007).

[11] 47 C.F.R. § 809(b) provides that an incumbent LEC's obligation to make available to any requesting telecommunications carrier any agreement to which the incumbent LEC is a party that is approved by a state commission pursuant to Section 252 of the 1996 Act "shall not apply where the incumbent LEC proves to the state commission that . . . [t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement."

[12] In the proceedings in the former BellSouth region, Nextel is also seeking, in the alternative, to adopt the BellSouth agreement pursuant to Section 252(i).

between the parties' switches than did Sprint PCS and Sprint CLEC, so that if AT&T were required to share equally with Sprint Nextel the price of those facilities in the legacy AT&T ILEC states, AT&T would be effectively subsidizing Sprint Nextel's use of those facilities through an economically irrational pricing arrangement.

DISCUSSION

I. THE COMMISSION SHOULD DECLARE THAT THE KENTUCKY BILL-AND-KEEP ARRANGEMENT AND THE KENTUCKY FACILITY PRICING ARRANGEMENT ARE STATE-SPECIFIC PRICING ARRANGEMENTS THAT ARE NOT ELIGIBLE FOR PORTING UNDER MERGER COMMITMENT 7.1.

As is clear from its heading (*see supra* at p. 3), Commitment 7.1 was intended as a procedural mechanism to "Reduc[e] Transaction Costs Associated with Interconnection Agreements" by allowing carriers to "port" an interconnection agreement from one AT&T/BellSouth state to another without the need for a new negotiation and arbitration. It was never intended to allow CLECs to impose pricing arrangements that apply in one state on the incumbent of another state. In fact, although AT&T's competitors (and other parties) were not shy about asking for the moon and the stars in the AT&T/BellSouth merger proceeding, and although the record of that proceeding reflects a host of requests for merger conditions, *no* party even *asked* for the scheme that Sprint Nextel seeks to impose now, and for good reason: to allow the porting of bill-and-keep arrangements and pricing formulas for interconnection facilities would turn Commitment 7.1 into a vehicle for economically irrational pricing and arbitrage. Unfortunately, that is exactly what Sprint has in mind.

A. Bill-and-Keep Is A State-Specific Pricing Plan That Is Not Subject To Porting Under Merger Commitment 7.1.

The plain language of Commitment 7.1 bars Sprint's scheme. It expressly excludes "state-specific pricing . . . plans" from the porting commitment. The bill-and-keep arrangement at issue is a state-specific "pricing plan." It sets a price – zero – for the transport and termination

of traffic by each party. Likewise, the 1996 Act classifies bill-and-keep arrangements as a form of pricing plan, as one of the "*Pricing* Standards" governed by Section 252(d). 47 U.S.C. § 252(d) (emphasis added). Subsection (2) of that Section addresses "*Charges* for transport and termination of traffic."[13] Subsection 252(d)(2)(A)(i) provides that such charges are to "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[14] Subsection 252(d)(2)(B)(i) then adds that the general provisions regarding reciprocal compensation charges do not preclude "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations," a category that "include[es] arrangements that waive mutual recovery (*such as bill-and-keep arrangements*)."[15] Simply put, the Act recognizes that bill-and-keep is simply one method to address "charges" for the "recovery of costs," just like any other pricing plan governed by the Act's "Pricing Standards."

It is equally plain that the pricing arrangement here is "state-specific." The arrangement was premised on a BellSouth study of the balance of traffic and payments among the contracting entities *within the nine BellSouth states*. This pricing arrangement is thus ineligible for porting outside those states under the plain terms of Commitment 7.1.

That bill-and-keep arrangements are inherently state-specific pricing arrangements, and thus ineligible for porting under Commitment 7.1 is further underscored by the 1996 Act and the Commission's rules implementing the Act. The Act requires that reciprocal compensation arrangements "provide for the mutual and reciprocal recovery" of costs "by *each* carrier" and it contemplates bill-and-keep only as an arrangement to "afford the *mutual* recovery of costs

---

13 *Id.* at § 252(d)(2) (emphasis added).

14 *Id.* at § 252(d)(2)(A)(i).

15 *Id.* at § 252(d)(2)(B)(i) (emphasis added).

through the *offsetting* of *reciprocal* obligations."[16] The Act thus prevents a requesting carrier (or a state commission) from forcing an incumbent LEC to participate in a highly unbalanced exchange of traffic where it does not recover its costs and where the parties' obligations are neither truly "reciprocal" nor "offsetting." Likewise, this Commission's rules implementing the 1996 Act limit the imposition of bill-and-keep arrangements to the context where "the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so."[17] Because a state may require bill-and-keep only for traffic that is roughly balanced, bill-and-keep is *necessarily* a state-specific pricing arrangement. Traffic that is balanced in one state may not be balanced in another. It is up to each state to weigh the evidence.

B. The Facility Pricing Arrangement in the Kentucky ICA Is Also A State-Specific Pricing Plan That Is Not Subject To Porting Under Merger Commitment 7.1.

Facility pricing arrangements, no less than bill and keep arrangements, also are state specific pricing arrangements that are not subject to porting under Commitment 7.1. A facility pricing arrangement is, like bill and keep, a formula for determining the price that each party pays for interconnection facilities. And, just as plainly, the facility pricing arrangement in the Kentucky ICA is "state-specific." As one would expect, the arrangement was premised on a Bellsouth study of the flow of interconnection traffic *within the nine BellSouth states.* It thus represents a state-specific pricing formula that is ineligible for porting outside those states under the plain terms of Commitment 7.1.

---

[16] 47 U.S.C. § 252(d)(2)(A)(i), (B)(1) (emphasis added).

[17] 47 C.F.R. § 51.713(b).

Indeed, it would be completely antithetical to the purpose of Commitment 7.1 to treat facility pricing arrangements as anything other than state-specific pricing. The facility pricing arrangements were incorporated into the Kentucky ICA because, based on traffic flows between the BellSouth ILECs, on the one hand, and Sprint PCS and Sprint CLEC, on the other, that arrangement was economically rational and efficient. Forcing BellSouth to agree to the same arrangement elsewhere and/or with other Sprint Nextel affiliates with different traffic mixes, however, necessarily leads to economically *irrational and inefficient* pricing. Surely Commitment 7.1 was not intended to require such absurd results.

The Commission should make clear that Merger Commitment 7.1 cannot be used to obtain the illicit subsidy that Sprint Nextel seeks.

C. Merger Commitment 7.1 Does Not Entitle a Carrier to Port an Agreement to Another State When it Would be Ineligible Under Commission Rules to Adopt that Agreement in the Same State.

Each of the AT&T ILECs has a general obligation under Section 252(i) of the Telecommunications Act of 1996 to make available to any requesting carrier any interconnection agreement to which it is a party.[18] This Commission has ruled that the obligation

> shall not apply where the incumbent LEC proves to the state commission that . . . [t]he costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement.

47 C.F.R. § 51.809(b). The rationale of Rule 809(b) is obvious: A general provision that allows requesting carriers to adopt an existing agreement, rather than negotiating and arbitrating an

[18] Section 252(i) of the 1996 Act provides, "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). Although Section 252(i) speaks in terms of making available "any interconnection, service, or network element," the Commission has ruled that a requesting carrier that seeks to make an adoption under Section 252(i) may not adopt part of an interconnection agreement, but instead must make an adoption on an "all or nothing" basis. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, 19 FCC Rcd 13494 (rel. July 13, 2004).

agreement of their own, cannot properly be applied to contract provisions that, if adopted, would impose costs on the ILEC in excess of the costs the ILEC incurs to perform the original agreement.

Merger Commitment 7.1 does not nullify this limitation on interconnection agreement adoptions. Indeed, to read the commitment otherwise would result in the absurd situation in which a carrier in, for example, Ohio could port an interconnection agreement approved in, for example, Florida, even though a carrier in Florida could not adopt the agreement under Section 252(i). Alternatively, this reading could effectively eviscerate Rule 809(b) altogether – even for in-state adoptions – by permitting carriers to end-run around that rule through a two-step process: specifically, and to use the previous example, a carrier in Ohio with an affiliate in Florida could port a Florida agreement not available for adoption in Florida under Commission rules from Florida to its affiliate in Ohio and then back to Florida, thereby accomplishing through two steps what Commission rules prohibit that carrier from accomplishing in one step. Merger Commitment 7.1 should not be read to allow such absurd results. Indeed, those who proposed or advocated for Commitment 7.1 failed even to mention the substantive limits in Rule 809(b) in their advocacy, much less present a case that those limits were a barrier to competition or should otherwise be superseded. To the contrary, the proponents of Commitment 7.1, *which did not include Sprint,* consistently presented this commitment as a means of extending in-state porting rights to out-of-state agreements. Some of them argued that the commitment would thereby reduce administrative costs by expanding the number of agreements available for adoption; a few argued that the commitment would also ameliorate the ostensible loss of benchmarking opportunities. No one suggested that the commitment should be read to confer broader out-of-state adoptions right than were sanctioned under Commission rules

for in-state adoptions. Sprint Nextel's claim that Commitment 7.1 repealed those rules *sub silentio* should thus be rejected.

Under section 51.809(b) of the Commission's rules, a local exchange carrier is not obligated to make available to a requesting telecommunications carrier an interconnection agreement if the costs of providing that agreement to the requesting carrier exceed the costs of providing that agreement to the carrier with which it was originally negotiated. Here, Sprint Nextel seeks to port an interconnection agreement under circumstances that would result in a significant increase in costs to AT&T, both interconnection costs, by virtue of the uncompensated costs of terminating for free Sprint Nextel traffic that is in excess of the traffic Sprint Nextel terminates for AT&T, and interconnection facility costs, by virtue of a 50/50 allocation of costs that, if rationally allocated in accordance with the parties' actual usage of the facilities, would be borne predominantly by Sprint Nextel. Under section 51.809(b), which must necessarily apply to out-of-state ports, just as it applies to in-state adoptions under Section 252(i), Sprint Nextel may not effect that result.

D. Merger Commitment 7.1 Does Not Entitle a Carrier to "Port" an Agreement In-State That it Cannot Adopt Under Section 252(i) Pursuant to The Commission's Rules.

Finally, Nextel cannot properly be permitted to avoid section 51.809(b) of the Commission's rules by "porting" pursuant to Commitment 7.1 an in-state interconnection agreement. As explained above, Nextel has initiated proceedings in the nine former BellSouth ILEC states, seeking to opt into the BellSouth agreement between the AT&T ILECs and Sprint CLEC and Sprint PCS. In those proceedings, Nextel contends it should be permitted to adopt those agreements in-state pursuant to Section 252(i), but also contends, in case adoption under Section 252(i) is prohibited by section 51.809(b) (as it should be), that Merger Commitment 7.1 permits it to make an in-state adoption without regard to the limitations the Commission has

recognized for Section 252(i). This would be a truly absurd result. Plainly, no one – not AT&T, not the Commission, and not the CLEC and cable operator proponents of the commitment, intended for Merger Commitment 7.1 to override or displace Section 252(i) for in-state adoptions. Certainly, no commenter proposed such a thing. The intent was to permit adoptions, which are available only in-state under Section 252(i), to cross state lines – not to change the rules for in-state adoptions.

II. EXPEDITED RESOLUTION OF THESE ISSUES IS ESSENTIAL TO PREVENT STATE COMMISSIONS FROM USURPING THIS COMMISSION'S JURISDICTION TO INTERPRET AND ENFORCE THE MERGER COMMITMENT.

The foregoing discussion makes clear that the Commission should reject any interpretation of Merger Commitment 7.1 that would allow Sprint Nextel to port the Kentucky bill-and-keep arrangement and facility pricing arrangement out of the states – and the specific three-carrier factual context – for which those provisions were developed. The need for a prompt Commission ruling is equally clear.

Even now, Sprint Nextel is pressing the state commissions in the 13 legacy AT&T ILEC states to resolve this issue, and Nextel is pressing the state commissions in the nine legacy BellSouth ILEC states to resolve Nextel's related request to adopt the AT&T/Sprint CLEC/Sprint PCS agreement within each state under Merger Commitment 7.1. Absent prompt action by this Commission, there is a substantial risk that some or all of the states that now have the dispute before them will decide to step into this Commission's shoes and try to resolve the parties' dispute for themselves. But *this* Commission is the one that should be resolving disputes about the meaning and intent of the merger commitment that it approved. The states are not as well suited to resolve those disputes, and the intervention of state commissions runs the risk that states will issue conflicting decisions that would take a great deal of time and judicial resources

to untangle. That result would, in and of itself, conflict with the 22-state nature of the merger commitment, and its true intent of reducing transaction costs of negotiation and arbitration.

Worse, there is always the risk that one or more states could issue decisions that conflict with this Commission's intent. The result would be a new scheme of regulatory arbitrage – after this Commission has gone to a great deal of trouble to eliminate such schemes, and at a time when this Commission is attempting to develop comprehensive reform. Other carriers may attempt to further spread that scheme. The Commission should act now to nip Sprint Nextel's attempted arbitrage in the bud.

Dovetailing with the need for prompt action, the dispute here is also eminently suited for expedited resolution. As demonstrated above, the issues between the parties can be resolved from the plain and express terms of a single merger commitment and of the specific contractual pricing arrangements that Sprint Nextel is trying to port. And of course, this Commission can quickly decide what *it* intended in approving the merger just over a year ago. There is no need for extensive evidence-gathering or fact-finding. Accordingly, the Commission can and should resolve this Petition on an expedited basis.

CONCLUSION

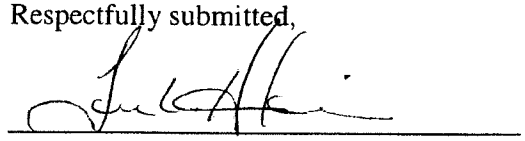
For the reasons set forth above, the Commission should grant the AT&T ILECs' request for expedited resolution, and declare that

(1) bill-and-keep arrangements for the transport and termination of telecommunications and facility pricing arrangements are "state-specific pricing" terms, not subject to porting under Commitment 7.1 to other states;

(2) Commitment 7.1 does not give a carrier the right to port an agreement from one state to another if that carrier would be barred by Commission rules implementing Section 252(i) of the Telecommunications Act of 1996 from adopting that agreement within the same state; and

(3) Commitment 7.1 does not apply to in-state adoptions of interconnection agreements or in any way supersede Commission rules governing such adoptions.

Respectfully submitted,



Terri L. Hoskins
Gary L. Phillips
Paul K. Mancini
AT&T INC.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-3810

Theodore A. Livingston
Dennis G. Friedman
Demetrios G. Metropoulos
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600

Counsel for the AT&T ILECs

February 5, 2008

EXHIBIT 1

Sprint
Together with NEXTEL

Sprint Nextel
6330 Sprint Parkway - KSOPHA0310
Overland Park, KS 66251
Office: (913) 762-4200 Fax: (913) 762-0104
Keith.kassien@sprint.com

Keith Kassien
Manager - Access Solutions

November 20, 2007

Electronic and Overnight mail

Ms. Kay Lyon, Lead Negotiator
AT&T Wholesale
4 AT&T Plaza, 311 S. Akard
Room 2040.03
Dallas, Texas 75202

Mr. Randy Ham, Assistant Director
AT&T Wholesale
8th Floor
600 North 19th Street
Birmingham, Alabama 35203

Ms. Lynn Allen-Flood
AT&T Wholesale - Contract Negotiations
675 W. Peachtree St. N.E.
34S91 Atlanta, GA 30375

Re: Adoption of the Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P. and Sprint Spectrum L.P. dated January 1, 2001.

Dear Kay, Randy and Lynn:

The purpose of this letter is to notify the AT&T Corporation incumbent local exchange entities operating in the former SBC legacy territory ("AT&T) that the wireless and CLEC subsidiaries of Sprint Nextel Corporation ("Sprint Nextel") are exercising their right to adopt the "Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P." dated January 1, 2001 ("Sprint ICA") as amended, filed and approved in the 9 legacy BellSouth states and extended in Kentucky. Sprint Nextel exercises this right pursuant to the FCC approved Merger Commitment Nos. 1 and 2 under "Reducing Transaction Costs Associated with Interconnection Agreements" ("Merger Commitments") as ordered in the AT&T/BellSouth merger, WC Docket No. 06-74. The Sprint ICA is available online at AT&T's website at:

http://cpr.bellsouth.com/clec/docs/all_states/800aa291.pdf

The impacted AT&T incumbent local exchange companies, Sprint CLEC and wireless entities are identified by state in the attached Exhibit 1. The Sprint Nextel entities are wholly owned subsidiaries of Sprint Nextel Corporation. Enclosed is Sprint Nextel's completed AT&T form with

respect to the Merger Commitments, with any language within such forms stricken to the extent such language is not contained within the Merger Commitments.

As AT&T is aware, all relevant state-specific sections are already identified in the Sprint ICA (the "state-specific sections"). Likewise, since the Sprint ICA is already TRRO-compliant and has an otherwise effective change of law provision, there is no issue to prevent AT&T from also making the Sprint ICA available to Sprint Nextel in the states listed on Exhibit 1 pursuant to Merger Commitment No. 2. By correspondence dated July 10, 2007, Sprint Nextel previously notified AT&T in connection with Sprint Nextel's intention to adopt the Sprint ICA in Ohio. We indicated in that letter that we recognized that within these state-specific sections "state-specific pricing and performance plans and technical feasibility" issues may need to be negotiated. We requested you to identify any state orders that AT&T believed constituted "state-specific pricing and performance plans and technical feasibility" issues that affected these state specific sections. We have also verbally indicated to AT&T that we intended to adopt the Sprint ICA in additional states beyond Ohio.

We have heard nothing from you on any proposed contract sections to be modified to address the state-specific sections or any state-specific orders regarding pricing, performance plans or other issues. Rather than address the issues presented, AT&T responded with cancellation letters of not only the existing agreement in Ohio but all of the existing agreements in all of the legacy 13 SBC states.

As you are aware we have filed a complaint in Ohio regarding the substance of our July 10th letter. AT&T recently filed its motion to dismiss. In light of these circumstances, it is apparent to us that AT&T simply is not interested in discussions regarding state-specific issues associated with the adoption of the Sprint ICA in other states. However, if AT&T is willing to discuss negotiations to address state-specific issues, please let us know by November 28, 2007. We understand that these negotiations would not prevent the adoption of the Sprint ICA pursuant to Merger Commitment No. 1 while those negotiations proceed.

Sprint Nextel hereby requests that AT&T provide, upon receipt of this letter, but no later than November 28, 2007, written acknowledgement of adoption of the Sprint ICA within the states listed on Exhibit 1.

Sprint's exercise of its rights under the Merger Commitments is in response to AT&T's termination of the Sprint Nextel interconnection agreements in the referenced states. This letter constitutes the notice we indicated that we would provide in our correspondence dated November 12, 2007. Should AT&T have any questions regarding Sprint Nextel's exercise of these rights under the Merger Commitments, please do not hesitate to call. Thank you in advance for your prompt attention to this matter.

Sincerely,

Keith L. Kassien

Enclosures

Cc: Mr. Jeffrey M. Pfaff, Counsel for Sprint Nextel
Mr. Fred Broughton, Interconnection Solutions

Carrier Contact Notice Information Attachment

All AT&T notices to Sprint Nextel should be sent to the same person(s) at the following addresses as an update to the addresses identified in the interconnection agreement between BellSouth Telecommunications, Inc. and Sprint Communications Company L.P. a/k/a Sprint Communications Company Limited Partnership and Sprint Spectrum L.P. (collectively "Sprint") ("the Sprint ICA").

For Sprint Nextel:

Manager, ICA Solutions
Sprint
P. O. Box 7954
Shawnee Mission, Kansas 66207-0954

or

Manager, ICA Solutions
Sprint
KSOPHA0310-3B268
6330 Sprint Parkway
Overland Park, KS 66251
(913) 762-4847 (overnight mail only)

With a copy to:

Legal/Telecom Mgmt Privacy Group
P O Box 7966
Overland Park, KS 66207-0966

or

Legal/Telecom Mgmnt Privacy Group
Mailstop: KSOPKN0214-2A568
6450 Sprint Parkway
Overland Park, KS 66251
913-315-9348 (overnight mail only)

Exhibit 1

State	AT&T Entity	Sprint Entities
AR	Southwestern Bell Telephone d/b/a AT&T Arkansas	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel South Corp., NPCR, Inc.
CA	Pacific Bell Telephone d/b/a AT&T California	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel of California, Inc.
CT	The Southern New England Bell Telephone d/b/a AT&T Connecticut	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Communications of the Mid-Atlantic, Inc.
KS	Southwestern Bell Telephone Company d/b/a AT&T Kansas	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
IL	Illinois Bell Telephone d/b/a AT&T Illinois	Sprint Communications L.P. d/b/a Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., NPCR, Inc.
IN	Indiana Bell Telephone d/b/a AT&T Indiana	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp, NPCR, Inc.
MI	Michigan Bell Telephone Company d/b/a AT&T Michigan	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
MO	Southwestern Bell Telephone Company d/b/a AT&T Missouri	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
NV	Nevada Bell Telephone Company d/b/a AT&T Nevada	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel of California, Inc.
OK	Southwestern Bell Telephone Company d/b/a AT&T Oklahoma	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp.
TX	Southwestern Bell Telephone Company d/b/a AT&T Texas	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel of Texas, Inc., NPCR, Inc.
WI	Wisconsin Bell Incorporated d/b/a AT&T Wisconsin	Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., NPCR, Inc.

TO: **Contract Management**
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

November 20, 2007

RE: Request to Port Interconnection Agreement

Director – Contract Management:

Pursuant to ICA Merger Commitment 7.1 under "Reducing Transaction Costs Associated with Interconnection Agreements," effective December 29, 2006, associated with the merger of AT&T Inc. and BellSouth Corp. ("ICA Merger Commitment 7.1"), Sprint Nextel Corporation, through its wholly-owned subsidiaries (jointly "Sprint Nextel"), exercises its right to port the existing Interconnection Agreement between BellSouth Telecom, Inc. and Sprint Communication Company L.P. and Sprint Spectrum L.P. in the state of Kentucky to the states of Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Oklahoma, Texas and Wisconsin and, by this notice, requests AT&T, through its incumbent local exchange carriers, to support this exercised right. Sprint Nextel understands that pursuant to ICA Merger Commitment 7.1, porting of the Interconnection Agreement is subject to state-specific pricing and performance plans.

	CARRIER NOTICE CONTACT INFO*
NOTICE CONTACT NAME	(see Attached)
NOTICE CONTACT TITLE	
STREET ADDRESS	
ROOM OR SUITE	
CITY, STATE, ZIP CODE	
E-MAIL ADDRESS	
TELEPHONE NUMBER	
FACSIMILE NUMBER	
STATE OF INCORPORATION	Delaware
TYPE OF ENTITY (corporation, limited liability company, etc.)	Corporation

AT&T already possesses appropriate proof of certification for state requested.

Form completed and submitted by: Fred Broughton

Contact number: 913-762-4070

*** All requested carrier notice contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.**

EXHIBIT 2

Eddie A. Reed, Jr.
Director-Contract Management
AT&T Wholesale Customer Care

AT&T Inc.
311 S. Akard, Room 940.01
Dallas, TX 75202
Fax 214 464-2006

at&t

December 13, 2007

Fred Broughton
Contract Negotiator
Sprint Nextel Access Solutions
6330 Sprint Parkway
KSOPHA0310-3B320
Overland Park, KS 66251

Re: Sprint Nextel's Requests to Port Interconnection Agreement

Dear Mr. Broughton:

Your letter and Exhibit 1 dated November 20, 2007 on behalf of Sprint Nextel Corporation ("Sprint Nextel") were received via e-mail on November 20, 2007. The aforementioned letter states that Sprint Nextel, through its wholly-owned subsidiaries listed on Exhibit 1, desires to port the existing three-way Interconnection Agreement (" Kentucky ICA") between BellSouth Communications, Inc. d/b/a AT&T Kentucky, Sprint Communications Company, L.P., and Sprint Spectrum, L.P. in the state of Kentucky to the states of Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Oklahoma, Texas and Wisconsin, pursuant to Merger Commitment 7.1 under "Reducing Transaction Costs Associated with Interconnection Agreements," effective December 29, 2006, associated with the merger of AT&T Inc. and BellSouth Corp. ("Merger Commitment 7.1").

Merger Commitment 7.1 does not permit all the entities listed on Exhibit 1 of your November 20th letter (one (1) CLEC and two (2) or more CMRS providers per state) to port into another state the Kentucky ICA, which is a three-way agreement between an ILEC, one (1) CLEC and one (1) CMRS provider. Merger Commitment 7.1 would permit one (1) CLEC and one (1) CMRS provider per state to port the Kentucky ICA.

To that end, please notify AT&T in writing which CMRS provider will be the porting CMRS provider for each state in which Sprint Nextel requests to port the Kentucky ICA. As soon as AT&T has been notified in writing of Sprint Nextel's election, AT&T will process Sprint Nextel's request and identify the state-specific modifications and modifications for technical feasibility and for technical, network and OSS attributes and limitations, and any other modifications required or permitted in accordance with Merger Commitment 7.1.

Sincerely,

Eddie A. Reed, Jr.

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for AT&T South Carolina ("AT&T") and that she has caused the Brief of AT&T South Carolina in Docket Nos. 2007-255-C and 2007-256-C to be served upon the following on February 28, 2008.

Nanette S. Edwards, Esquire
1441 Main Street, Suite 300
Columbia, South Carolina 29201
(Office of Regulatory Staff)
(Electronic Mail)

Jocelyn G. Boyd, Esquire
Staff Attorney
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

F. David Butler, Esquire
Senior Counsel
S. C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

Joseph Melchers
Chief Counsel
S.C. Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211
(PSC Staff)
(Electronic Mail)

John J. Pringle, Esquire
Ellis Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, South Carolina 29202
(NewSouth, NuVox, KMC, Xspedius)
(Electronic Mail)

William R. L. Atkinson, Esquire
Sprint Nextel Corporation
223 Peachtree Street, Suite 2200
Atlanta, Georgia 30303
(Electronic Mail)

Joseph M. Chiarelli, Esquire
Sprint Nextel Corporation
6450 Sprint Parkway,
Mailstop KSOPHNO214-2A671
Overland Park, Kansas 66251
(Via U. S. Mail)

Kyla M. Laney

683301